
THE WAUWATOSA POLICE & FIRE COMMISSION

INVESTIGATION OF OFFICER JOSEPH MENSAH

Examination of CHIEF BARRY WEBER,
before ALICE M. BARBELN, a Registered Professional
Reporter and Notary Public in and for the State of
Wisconsin, at Biskupic & Jacobs, S.C., 1045 West Glen
Oaks Lane, Suite 106, Mequon, Wisconsin, on
September 21, 2020, commencing at 1:05 p.m. and
concluding at 3:35 p.m.

A P P E A R A N C E S

BISKUPIC & JACOBS, S.C., by
MR. STEVEN M. BISKUPIC,
MS. MICHELLE L. JACOBS,
1045 West Glen Oaks Lane, Suite 106,
Mequon, Wisconsin 53092,
appeared on behalf of the Fire & Police Commission.

GRGB LAW, by
MR. PATRICK KNIGHT,
330 East Kilbourn Avenue, Suite 1170,
Milwaukee, Wisconsin 53202,
appeared on behalf of Chief Barry Weber.

A L S O P R E S E N T

Mr. Dale Mueller, Investigator;
Mr. Rich Neureuther, Investigator;
Mr. Mike DeMarco, Investigator.

* * * * *

I N D E X

Examination:	Page
By Mr. Biskupic.....	5
Exhibit Identified:	(None)

1

TRANSCRIPT OF PROCEEDINGS

01:06:07

2

MR. BISKUPIC: The record can reflect

01:06:10

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that we are on the record at Biskupic & Jacobs

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Law Firm. This is a proceeding in connection

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with the Wauwatosa Police & Fire Commission.

01:06:19

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I'm Steven Biskupic, the independent

01:06:22

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investigator assigned by the Fire & Police

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Commission. With me today is my law partner,

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Michelle Jacobs, who is assisting on the

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matter, along with three retired FBI agents:

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Dale Mueller, Michael DeMarco, and Rich

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Neureuther.

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We are here today to interview

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Wauwatosa Police Chief Barry Weber who is here

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in person along with his attorney, Patrick

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Knight.

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Good afternoon, Chief, Pat. If you are

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ready to proceed, we will start.

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THE WITNESS: Yes.

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EXAMINATION

21

BY MR. BISCUPIC:

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Q Chief, could you give us a brief summary of

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your background, when you started in law

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enforcement, when you got hired by Wauwatosa,

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when you became police chief, how long you've

01:06:58 1 been chief.

01:06:58 2 A I started in law enforcement when I was 18
01:07:01 3 years old, 1973 as a radio dispatcher in Wood
01:07:05 4 Dale, Illinois. I became a police officer in
01:07:08 5 1975. Stayed in Wood Dale until 1984, became a
01:07:16 6 police chief in Southwest Missouri, the city of
01:07:19 7 Aurora, Missouri, as police chief and public
01:07:22 8 safety director, and the last six months I was
01:07:24 9 a city manager too. I stayed there for two
01:07:27 10 years, and then I went to Fort Dodge, Iowa, in
01:07:30 11 1986 to 1990 where I was police chief for Fort
01:07:33 12 Dodge for four years. I came to Wauwatosa May
01:07:36 13 29, 1990, and I have been police chief since
01:07:39 14 then.

01:07:39 15 Q Okay. How many -- approximately how many
01:07:43 16 police officers are under your command in
01:07:47 17 Wauwatosa?

01:07:47 18 A About 96.

01:07:49 19 Q And I take it as part of your duties, you are
01:07:53 20 familiar with the rules and regulations and the
01:07:57 21 discipline of police officers?

01:07:58 22 A Yes.

01:07:59 23 Q What I would like to do today is review some
01:08:02 24 particular policies and procedures. I would
01:08:06 25 like to start it -- it's a requirement, is it

01:08:08 1 not, that all the Wauwatosa police officers
01:08:11 2 review and read any policies, procedures,
01:08:15 3 orders, memoranda that are put to them in
01:08:17 4 writing?

01:08:18 5 A Yes.

01:08:18 6 Q Okay. The first issue that's raised in
01:08:21 7 connection with the complaint against Officer
01:08:25 8 Mensah that I would like to discuss today is
01:08:27 9 whether or not he received proper training from
01:08:31 10 the department. I would note that, based on
01:08:34 11 records that your department has supplied to
01:08:38 12 us, that we received a detailed printout and
01:08:41 13 other documents related to his training, and
01:08:44 14 just to summarize briefly, in his probationary
01:08:49 15 time or at least between January of 2015 and
01:08:52 16 June of 2016, he received approximately 151
01:08:55 17 hours of training. The totals would have been
01:08:58 18 consistent -- and the type of training would
01:09:00 19 have been consistent with the Wisconsin
01:09:04 20 Training and Standards Bureau. And then we
01:09:08 21 note specifically during the first 18 months of
01:09:11 22 his training, he received several specific
01:09:14 23 course instructions on, you know, using lethal
01:09:18 24 force, and then, looking at the total training
01:09:22 25 of his career, between January 3rd of 2015 and

01:09:27 1 June 10th of 2020, the record showed that he
01:09:31 2 received 1,149 and a half hours of training.
01:09:37 3 Your office also supplied to us comparison of
01:09:41 4 four other -- excuse me -- three other officers
01:09:44 5 who had received -- or, excuse me, had similar
01:09:46 6 service time, and they had training of 1,096
01:09:51 7 hours, 738 hours, and then 1,511 hours.

01:09:57 8 Obviously, given the law enforcement
01:10:00 9 experience of the three retired FBI agents in
01:10:03 10 the room and the other two that are helping us,
01:10:06 11 it seemed to us that he certainly received, not
01:10:10 12 just adequate training, but more than adequate
01:10:13 13 training, particularly on use of force. Are
01:10:16 14 you in agreement with that conclusion, or is
01:10:18 15 there anything about his training that gives
01:10:19 16 you pause?

01:10:21 17 A No. I think he's got a lot of training, and I
01:10:25 18 see there is a lot of firearms training in
01:10:27 19 there too. He was a member of the SRT team,
01:10:30 20 special response team, which is equivalent to
01:10:33 21 SWAT. In our department, we call it SRT, so he
01:10:37 22 probably got more training than the average cop
01:10:39 23 would.

01:10:39 24 Q Have you ever had a complaint that an officer
01:10:42 25 did not receive proper training that you can

01:10:43 1 recall, prior to this one?

01:10:47 2 MS. JACOBS: Firearms, or any kind of
01:10:49 3 training?

01:10:50 4 MR. BISKUPIC: I would say both.

01:10:52 5 THE WITNESS: Never about firearms,
01:10:53 6 but it seems like any time there is a lawsuit
01:10:56 7 filed today, they always claim that the police
01:10:58 8 chief failed to properly give them the right
01:11:02 9 training and it's always read into something
01:11:03 10 where I'm liable for it because of just being
01:11:06 11 the police chief, but I can't think of anything
01:11:08 12 specific that I've been accused of.

01:11:11 13 BY MR. BISKUPIC:

01:11:11 14 Q Can you think of anything in those lawsuits
01:11:11 15 whether or not there was a finding that there
01:11:13 16 was inadequate training?

01:11:15 17 A No, there never was.

01:11:16 18 Q Okay. Dale?

01:11:22 19 MR. MUELLER: The Acadis printout was
01:11:26 20 excellent when we talked to some of your
01:11:27 21 officers. I just was unclear about the
01:11:29 22 duration of the on-the-job training with the
01:11:32 23 FTO. Can you just describe how that works?

01:11:35 24 THE WITNESS: They just increased the
01:11:38 25 training earlier this year or last year, but,

01:11:40 1 you know, the academy is first always and then
01:11:43 2 we usually have the guys ride for probably
01:11:52 3 another 10 to 12 weeks more, so we have them
01:11:56 4 for another three months or so when they are
01:11:58 5 riding with somebody.

01:11:59 6 MR. MUELLER: And that comes in
01:12:01 7 stages? I think Lieutenant Roy mentioned that
01:12:05 8 it's four stages to the OJT?

01:12:08 9 THE WITNESS: Yeah. We call it four
01:12:10 10 steps. Step one is they just start to get
01:12:14 11 familiar with things. They do more observation
01:12:16 12 than anything else, and then as they progress
01:12:18 13 through, then we start having them do more of
01:12:22 14 the -- they do the driving. They take care of
01:12:24 15 handling the calls with the officer, the
01:12:27 16 training officer overseeing everything. Then
01:12:31 17 we get to the point as they move along, they
01:12:34 18 get a little bit more proficient, and finally
01:12:35 19 before they go on their own, they do a shadow
01:12:37 20 period where the training officer is not even
01:12:40 21 in uniform but just is in plain clothes, so he
01:12:43 22 or she will only step in if there is a real
01:12:46 23 problem. And then after that, then they are on
01:12:48 24 their own, and then they are still on probation
01:12:50 25 for the duration of the year.

01:12:52 1 MR. MUELLER: And that's all

01:12:54 2 probation?

01:12:55 3 THE WITNESS: Yes.

01:12:56 4 MR. MUELLER: Would an unsatisfactory
01:12:58 5 cause his termination, or --

01:13:01 6 THE WITNESS: It depends on what area
01:13:03 7 of unsatisfactory. If they are not doing the
01:13:05 8 right type of reports or something, then there
01:13:07 9 is usually remedial training. If they did
01:13:10 10 something totally unsafe, or, you know, they
01:13:13 11 could hurt somebody, that would -- that might
01:13:15 12 rise to the level where it would come to my
01:13:18 13 attention, but that hasn't happened.

01:13:19 14 MR. MUELLER: Ever?

01:13:21 15 THE WITNESS: I don't think so, no,
01:13:22 16 not in that program.

01:13:23 17 MR. MUELLER: Thanks.

01:13:26 18 MR. BISKUPIC: Anybody else?

01:13:32 19 MS. JACOBS: Can you just describe
01:13:34 20 how they transition between those phases?

01:13:37 21 THE WITNESS: We have the field
01:13:38 22 training officers make up what we call the FTO
01:13:42 23 cadre, and before you go to the next phase,
01:13:44 24 they all get together -- the FTOs all get
01:13:47 25 together in a conference room, and they go over

01:13:49 1 the -- because we give them a daily observation
01:13:52 2 report, you know, daily they are marked: yes,
01:13:56 3 they are meeting the standards; no, they are
01:13:58 4 not. So if I have an officer for this first
01:14:01 5 phase before we hand him or her over to the
01:14:04 6 next one, we will say to the next training
01:14:06 7 officer, here's what you need to look for
01:14:08 8 because she's a little bit unsure when she's,
01:14:13 9 you know, in certain situations, or he's not
01:14:17 10 making enough traffic stops, or maybe they are
01:14:18 11 not practicing the right techniques, so just
01:14:21 12 keep an eye out for that. Or it seems they
01:14:24 13 have trouble with report writing or geography,
01:14:27 14 so we work on those kind of things.

01:14:36 15 BY MR. BISKUPIC:

01:14:36 16 Q Next I would like to move on to the complaint
01:14:39 17 alleging that Officer Mensah should not have
01:14:42 18 participated in a legal defense fund, and the
01:14:44 19 complaint cites, among other things, department
01:14:49 20 Rules 57, 58, and 65 which prohibit use of
01:14:52 21 position for personal gain.

01:14:54 22 The first question I have is a factual
01:14:56 23 matter. The fundraising, I guess, for Officer
01:15:03 24 Mensah utilized a picture of him -- it would
01:15:07 25 appear to be his official picture from

01:15:10 1 Wauwatosa. I believe his attorney in response
01:15:11 2 stated that that picture has already been put
01:15:13 3 out there in the public record. Has there been
01:15:17 4 requests that you are aware of for his picture
01:15:20 5 by members of the media?

01:15:22 6 A Yes.

01:15:23 7 Q Do you consider that his picture has been put
01:15:25 8 out there in the public record?

01:15:27 9 A Yes. Media requested his pictures -- every
01:15:31 10 time there is an officer-involved shooting,
01:15:33 11 they request pictures. I usually try to resist
01:15:36 12 that as long as I can mainly because I don't
01:15:41 13 comment on personnel things as they are -- as
01:15:44 14 we are still going through them, so the picture
01:15:46 15 that I've seen, yeah, we -- I think maybe we
01:15:51 16 eventually had to release that one, but they
01:15:53 17 had it ahead of time, the media did.

01:15:55 18 Q Okay. Do you recall any other Wauwatosa police
01:16:01 19 officer having either directly or indirectly
01:16:04 20 involvement with the legal defense fund?

01:16:08 21 A Not that I'm aware of.

01:16:10 22 Q Okay. I guess, based on my review of the Rules
01:16:15 23 57, 58, and 65, and then also Wauwatosa
01:16:20 24 Municipal Code sections 2.05.030 and .040,
01:16:25 25 which are similar about conflict of interest

01:16:29 1 and use of personal gain, it's not clear to me
01:16:31 2 that it is prohibited for an officer to
01:16:34 3 participate in a legal defense fund; clearly
01:16:37 4 the officer has institutional rights. He's got
01:16:41 5 a union membership. Obviously, they can
01:16:43 6 provide him benefits. Are you aware of any
01:16:50 7 policy, procedural rule, or anything else from
01:16:53 8 the City of Wauwatosa that would inform an
01:16:55 9 officer that they are not to participate in a
01:16:57 10 legal defense fund?

01:16:58 11 A No, I'm not aware of any.

01:17:01 12 Q Do you recall whether Rules 57, 58, and 65 have
01:17:05 13 been used to impose discipline related to legal
01:17:10 14 fees at any time in the past?

01:17:14 15 A Legal fees, no.

01:17:16 16 Q What type of things have Rules 57, 58, and 65
01:17:20 17 been utilized for in the past for discipline,
01:17:24 18 if you can recall?

01:17:25 19 A Rule 57, "Acceptance of bribes, gifts, rewards
01:17:30 20 or fees," that one's pretty clear, so like if
01:17:33 21 somebody -- we've had officers report a lot of
01:17:35 22 times; they will be in Starbucks and somebody
01:17:38 23 wants to pay for their coffee or gives them a
01:17:41 24 gift card. They immediately report it and say,
01:17:44 25 "Chief, I got this gift card." "Okay, well

01:17:46 1 thanks for letting me know," and sometimes we
01:17:48 2 will let them keep it, or sometimes if we get a
01:17:50 3 bunch of things because people a lot of times
01:17:53 4 will say I want to buy the whole department
01:17:57 5 lunch or we get like 100 gift cards, if it's
01:17:58 6 not enough for everybody, we always do a raffle
01:18:00 7 thing where we just put their names, and people
01:18:02 8 get things that way because there is no other
01:18:03 9 way to distribute them equitably. So that
01:18:06 10 would be the only time Rule 57 comes into play.

01:18:10 11 58, "Solicitation," I'm not aware of
01:18:13 12 anybody soliciting anything while on duty. And
01:18:22 13 65, "Abuse of Position," I don't think I've
01:18:28 14 ever -- I've never charged anybody with abusing
01:18:30 15 their position.

01:18:33 16 Q Okay. I think some of these procedures,
01:18:35 17 particularly the Wauwatosa Municipal Code,
01:18:39 18 involve contracting and especially, you know,
01:18:41 19 not having a contract with somebody that you
01:18:43 20 might have a private interest in. I assume
01:18:46 21 that Officer Mensah is not in any way involved
01:18:49 22 in department contracting?

01:18:50 23 A He is not.

01:18:52 24 Q The next one I would like to move on to is the
01:19:00 25 complaint that the officer may have violated

01:19:04 1 Social Media Policy 18-10. I'll give you each
01:19:09 2 a copy of that.

01:19:12 3 As I understand what's being alleged
01:19:17 4 is that Officer Mensah violated the policy on
01:19:23 5 June 5, 2020, at 10:18 p.m. by posting on a
01:19:30 6 Facebook page the definition of slander and
01:19:33 7 libel and then putting the following statement
01:19:36 8 "Y'all better pray to whoever it is you pray to
01:19:44 9 that you can back up whatever allegations you
01:19:46 10 make about me. Especially" -- and the word
01:19:50 11 especially is in all caps -- "if you work for
01:19:52 12 or are associated with any organizations. I'll
01:19:56 13 leave it at that." So Social Media Policy
01:20:04 14 18-10 states that officers may use social
01:20:07 15 media, but they are instructed that they "are
01:20:09 16 expected to maintain professionalism and
01:20:13 17 appropriate contact online." The complaint
01:20:15 18 also cites Rule 30 that says that officers
01:20:19 19 should not engage in any conduct that is
01:20:22 20 overbearing or oppressive. Of course, the
01:20:24 21 policy also recognizes that officers have a
01:20:26 22 constitutional right to speak on things. I
01:20:28 23 think as I look on the policy, you are mainly
01:20:30 24 concerned that they not do any Facebook posting
01:20:34 25 while on duty and certainly not discuss

01:20:38 1 Wauwatosa's investigations without permission.

01:20:41 2 First, just note for the record that

01:20:44 3 your department has documented for me that

01:20:48 4 Officer Mensah was not on duty at 10:18 p.m. on

01:20:52 5 June 5th, so he would have not have posted this

01:20:54 6 while on duty. Second, going to the substance

01:20:58 7 of the statement, given the context, do you see

01:21:03 8 anything in here that bothers you about

01:21:05 9 inappropriate conduct online?

01:21:07 10 A Could you read it to me again what he said?

01:21:09 11 Q Sure. "Y'all better pray to whoever it is you

01:21:13 12 pray to that you that you" -- it says "that

01:21:18 13 you, that you" twice in this quote -- "can back

01:21:20 14 up whatever allegations you make about me,

01:21:23 15 especially if you work for or are associated

01:21:26 16 with any organizations. I'll leave it at

01:21:29 17 that." And above that statement, he has the

01:21:31 18 definition of slander and libel.

01:21:34 19 A Okay. The question is do I see that as

01:21:37 20 inappropriate?

01:21:38 21 Q Correct.

01:21:41 22 A I'm not sure I would say it's inappropriate as

01:21:47 23 much as I understand what he is going through.

01:21:50 24 I think he was letting his emotions get the

01:21:55 25 best of him because he's away from the

01:21:58 1 department for a while, and people have been
01:22:00 2 saying things about him in the media since the
01:22:04 3 shooting happened in February, so, no, I wish
01:22:09 4 he hadn't done that because it just adds fuel
01:22:11 5 to the fire that people want to attack him even
01:22:14 6 more, but as far as violation of the policy, I
01:22:17 7 didn't really see it as one.

01:22:18 8 Q It may not have been the wisest course of
01:22:20 9 action but not in violation of the policy?

01:22:22 10 A Common sense would say keep your mouth shut,
01:22:25 11 but that's not what happened in this case.

01:22:27 12 Q Okay. Staying on the media policy -- or,
01:22:29 13 excuse me, the --

01:22:32 14 MS. JACOBS: Social media?

01:22:33 15 BY MR. BISKUPIC:

01:22:34 16 Q Yeah, well, I'm going to move to the media
01:22:36 17 policy. The media policy that was provided to
01:22:49 18 us is 13-08, and one of the complaints that was
01:22:53 19 submitted was that Officer Mensah violated the
01:22:58 20 media policy by granting interviews to
01:23:00 21 conservative media which included a WISN radio
01:23:04 22 interview and a podcast. We will get into the
01:23:07 23 radio interview in much more detail a little
01:23:10 24 later, but just starting with the complaint
01:23:11 25 about choosing media -- first of all, for any

01:23:18 1 of these media interviews, am I correct that
01:23:20 2 you did not give permission to the officer to
01:23:24 3 engage in an official interview?

01:23:26 4 A I was not asked.

01:23:28 5 Q Okay. In particular, July 28, 2020, is the
01:23:32 6 radio interview with WISN. You were not asked
01:23:37 7 before that interview to give permission for
01:23:39 8 that?

01:23:39 9 A That's correct.

01:23:40 10 Q And nobody else in the department was that you
01:23:42 11 are aware of?

01:23:43 12 A Not that I'm aware of.

01:23:45 13 Q Okay. On this particular charge of the
01:23:50 14 complaint, I don't read anything in the media
01:23:52 15 policy that dictates whether one outlet can be
01:23:59 16 used, you know, preferably over another. It
01:24:03 17 certainly would seem maybe in the department
01:24:04 18 interest to utilize pro law enforcement media,
01:24:08 19 but, in any event, that seems to be a decision
01:24:11 20 for you and other policymakers. Am I incorrect
01:24:15 21 on that, in terms of choosing who you do
01:24:18 22 interviews with and how you put information out
01:24:23 23 to the media as the department?

01:24:24 24 A As a department, if there is certain
01:24:26 25 information you want to get out, everybody's

01:24:28 1 got certain reporters they trust more than
01:24:30 2 somebody else or somebody who will be more
01:24:32 3 confidential if you tell them something off the
01:24:35 4 record, so we do have our favorites, I would
01:24:37 5 guess.

01:24:41 6 Q So nothing in your policy that you are aware of
01:24:44 7 prohibits that; it seems to me it gives you the
01:24:46 8 discretion?

01:24:47 9 A Yeah, I have the discretion to do that.

01:24:52 10 Q Okay. Moving back now more to the substance of
01:24:58 11 Officer Mensah's encounter with Jay Anderson in
01:25:02 12 2016. The first rule that I would like to
01:25:06 13 address is Rule 22, which in the rule book
01:25:11 14 deals with officer discretion, and, in
01:25:14 15 particular, the complaint alleges that the
01:25:16 16 officer violated his discretion by approaching
01:25:20 17 the passenger side of the Anderson vehicle
01:25:24 18 instead of the driver's side and, more
01:25:27 19 particularly, they said the complaint alleges
01:25:29 20 that Officer Mensah violated his discretion
01:25:33 21 under Rule 22 by parking his squad facing the
01:25:36 22 front of Anderson's vehicle, by turning on what
01:25:39 23 they referred to as "blinding take-down white
01:25:42 24 lights" instead of the emergency lights and by
01:25:45 25 approaching the passenger side of the vehicle

01:25:47 1 instead of the driver's side in which they
01:25:50 2 contend all of this was for nothing more than,
01:25:52 3 at the time, a county ordinance violation.

01:25:58 4 Have you, as part of when you
01:26:01 5 reviewed this incident back in 2016 or more
01:26:03 6 recently, looked at the issue of whether or not
01:26:05 7 he should have walked in front of the vehicle
01:26:08 8 to the driver's side or whether he exercised
01:26:10 9 proper discretion by staying on the passenger
01:26:14 10 side?

01:26:14 11 A I have looked at that.

01:26:15 12 Q And can you tell us what your view of that is?

01:26:18 13 A Well, it certainly doesn't violate Rule No. 22
01:26:22 14 because the officer's got discretion to do
01:26:24 15 whichever way he wants to approach that he
01:26:27 16 feels is most appropriate for that
01:26:29 17 circumstance.

01:26:30 18 Q What factors go into officer discretion? I
01:26:34 19 assume safety is near the top?

01:26:36 20 A Safety. If you see traffic stops by state
01:26:39 21 troopers, they usually walk up on the passenger
01:26:42 22 side now, and a lot of police officers are
01:26:44 23 doing that too because the drivers are always
01:26:46 24 looking on the left side, so you come up on the
01:26:49 25 right side, so that happens a lot. In this

01:26:54 1 case, it looks like, you know, you see the car
01:26:56 2 is facing each other, and he's got the lights
01:26:58 3 on it, I think at the time he was probably --
01:27:01 4 and this is just from what I gather, he thought
01:27:04 5 he was just checking on a car that was just in
01:27:07 6 the park that shouldn't be there. He didn't
01:27:08 7 expect it to turn out the way it did, so he
01:27:11 8 just approached it straight on with the lights.
01:27:15 9 Somebody else might do it somewhat differently,
01:27:17 10 but there was no violation of any policy or
01:27:20 11 procedure. We have guys that teach vehicle
01:27:23 12 contacts, and they said that was perfectly
01:27:27 13 legit the way he did it.

01:27:31 14 MR. BISKUPIC: Mike, you are the one
01:27:32 15 that looked at this for our team.

01:27:36 16 MR. DEMARCO: I've looked into this
01:27:37 17 about approaching the passenger side. The
01:27:40 18 research I did confirmed that it's a very
01:27:45 19 productive and careful way to approach a car,
01:27:49 20 especially at night. And parking in the front,
01:27:55 21 from what I've read, allows the officer with
01:27:59 22 the take-down lights on to come to the
01:28:01 23 passenger side where he's not expected and be
01:28:05 24 unobserved because the take-down lights are
01:28:08 25 basically blinding the driver.

01:28:11 1 THE WITNESS: Yes.

01:28:12 2 MR. DEMARCO: So, the research I did,
01:28:14 3 I thought Mensah did an appropriate
01:28:18 4 decision-making procedure there, and it also,
01:28:23 5 when you approach from the front, it takes away
01:28:27 6 the driver's use of the rear view and the
01:28:30 7 sideview mirrors to see where the officer is
01:28:33 8 coming from, especially with the take-down
01:28:35 9 lights blinding them from the front. I thought
01:28:38 10 he must have sat in the car for at least a
01:28:40 11 short period of time and decided this was the
01:28:42 12 best way to go. And I think, Steve, I gave you
01:28:48 13 the Massachusetts municipal folder for the
01:28:58 14 instructors doing basic training for police
01:29:01 15 officers, and in there they say that using the
01:29:04 16 passenger side is probably the best way to go.
01:29:07 17 I think it was an appropriate decision.
01:29:10 18 Whether or not it's taught that way, I don't
01:29:12 19 know. I have no idea.

01:29:13 20 THE WITNESS: I think they allow them
01:29:15 21 to go whatever way they feel comfortable with,
01:29:18 22 depending on the situation.

01:29:20 23 MR. DEMARCO: It's also safer on the
01:29:22 24 passenger side for oncoming vehicles coming
01:29:24 25 from behind you. Oftentimes you see on the

01:29:28 1 news that an officer was struck by someone who
2 wasn't paying attention who is going out ahead
3 of them.

01:29:30 4 THE WITNESS: Right. This is 3:00
01:29:32 5 in the morning, so it was dark. Had it been
01:29:34 6 3:00 in the afternoon, probably not the best
01:29:36 7 way to do it for safety.

01:29:39 8 MR. DEMARCO: I think it shows some
01:29:41 9 good decision-making by Officer Mensah in that
01:29:46 10 instance.

01:29:47 11 BY MR. BISKUPIC:

01:29:48 12 Q What about the fact that he chose to get out of
01:29:50 13 the vehicle and approach? According to his
01:29:54 14 statement earlier in the evening, he came
01:29:56 15 through the park and basically just chased
01:29:58 16 people out, you know, I think approximately
01:30:01 17 12:30. According to the videotape, a Milwaukee
01:30:05 18 police vehicle comes into the park at some
01:30:07 19 point looking and doesn't chase people out of
01:30:09 20 the park. A Wauwatosa squad comes in at some
01:30:13 21 point -- I don't believe that was Officer
01:30:15 22 Mensah -- at approximately 12:30. And here at
01:30:22 23 3:00 a.m., it's the only car in the parking
01:30:25 24 lot, and he chooses to get out of his police
01:30:29 25 squad and approach the vehicle. Can you just

01:30:32 1 explain for me about why an officer might make
01:30:34 2 a decision to just chase people out of the
01:30:37 3 park, maybe turning on his lights or pulling in
01:30:39 4 and everyone sees and leaves because the park
01:30:41 5 closes at 10:00 I think in the summertime when
01:30:44 6 this happened, versus I'm going to get out of
01:30:46 7 my vehicle and approach?

01:30:47 8 A I can only speculate, but maybe he drove in
01:30:50 9 there, and he didn't see any movement in the
01:30:52 10 car, because there was some things that he put
01:30:57 11 in his report that he thought at first that
01:30:59 12 Anderson was asleep, so maybe he wasn't
01:31:03 13 responding to the lights or whatever in his
01:31:06 14 eyes, so that's when he decided he would get
01:31:08 15 out and approach.

01:31:09 16 Q Is there anything that instructs officers as
01:31:13 17 to, you know, this truly is part of their
01:31:15 18 discretion, when they -- I mean, there were
01:31:19 19 obviously lots of vehicles that were in
01:31:20 20 violation of the county ordinance of being in
01:31:23 21 the park after closing. I don't believe
01:31:25 22 Wauwatosa police have ever issued a county
01:31:28 23 ordinance for that park or at least Officer
01:31:32 24 Mensah said he had never done so, but how an
01:31:34 25 officer chooses to, you know, again just chase

01:31:39 1 people away versus make an approach, you've
01:31:42 2 said maybe because he looked like he was
01:31:44 3 asleep; he was after the only car there;
01:31:46 4 obviously, you got a difference in time between
01:31:48 5 12:30 and 3:00 in the morning, et cetera. Is
01:31:51 6 there anything else that comes to mind for you
01:31:52 7 as to the officer exercising his discretion
01:31:55 8 regarding this county ordinance violation?

01:31:58 9 A If I had pulled in the park and didn't see a
01:32:03 10 guy moving in the car, maybe he's asleep, maybe
01:32:06 11 he's got some other medical problem or
01:32:08 12 whatever, so if I don't get a response, I would
01:32:11 13 probably get out to see if he's okay.

01:32:12 14 Q There is no rule, no procedure, no order,
01:32:17 15 certainly nothing that I've been able to come
01:32:19 16 across that your office has produced which
01:32:22 17 would say that you must do this versus
01:32:24 18 something else?

01:32:26 19 A No.

01:32:26 20 Q You are not aware of anything?

01:32:28 21 A No.

01:32:31 22 MR. BISKUPIC: Anybody else?

01:32:35 23 MR. MUELLER: Just to reconfirm, are
01:32:37 24 you aware of, based on your experience and
01:32:39 25 discussion with fellow officers, whether this

01:32:40 1 technique of a front-to-front approach is
01:32:42 2 covered in, for instance, the high-risk vehicle
01:32:45 3 take-downs?

01:32:47 4 THE WITNESS: I have talked with our
01:32:48 5 vehicle contact people, and they said it can go
01:32:52 6 either way, whatever you decide to do at that
01:32:54 7 particular time. I might feel more comfortable
01:32:59 8 doing it another way, I'm not sure, but it's
01:33:01 9 all, when you pull in the park -- I don't know,
01:33:05 10 maybe he circled around first; that I don't
01:33:07 11 know, or if he just went right in. So if he
01:33:10 12 went right in there and he thought maybe the
01:33:12 13 guy was awake or whatever, he wanted to get out
01:33:14 14 right away, I don't know, so either way it's up
01:33:17 15 to their discretion.

01:33:19 16 MR. MUELLER: So, again, based on
01:33:21 17 your experience, there is no procedure that
01:33:24 18 precludes this front approach?

01:33:27 19 THE WITNESS: No. It's appropriate.

01:33:28 20 MR. MUELLER: I want to clear
01:33:29 21 something up. The Acadis training record,
01:33:35 22 state training record, does not include the FTO
01:33:38 23 training periods; is that right? All those
01:33:41 24 hours he spends with a FTO are not on his
01:33:45 25 Acadis report?

01:33:45 1 THE WITNESS: I don't believe they
01:33:47 2 are.

01:33:47 3 MR. MUELLER: Acadis, A-C-A-D-I-S:

01:33:57 4 MR. BISKUPIC: Okay. Anything else
01:33:58 5 on the approach to the vehicle?

01:33:59 6 BY MR. BISKUPIC:

01:34:00 7 Q Let's talk about the squad video. This is
01:34:06 8 policy -- Operating Procedure 2016-03. The
01:34:19 9 first thing I'm going to ask you to do is to
01:34:21 10 turn to page 2 under Roman Numeral 3,
01:34:32 11 "Procedure." This is where it describes how
01:34:37 12 the camera may be activated in-squad, laptop
01:34:43 13 computer, or the microphone worn by the
01:34:48 14 officer. I guess the first question I'm going
01:34:50 15 to ask, our understanding from reading about
01:34:55 16 the camera and the demonstrations that your
01:34:59 17 department provided is that when the officer
01:35:03 18 activates the camera, it actually goes back --
01:35:08 19 using quote -- "in time" to record the prior 20
01:35:12 20 to 30 seconds?

01:35:13 21 A Yes.

01:35:13 22 Q That means the camera is running constantly,
01:35:17 23 correct, and recording constantly?

01:35:18 24 A Yes, I believe so.

01:35:19 25 Q And it's the activation, which, as I understand

01:35:22 1 it, stops the automatic deleting?

01:35:25 2 A Yes.

01:35:25 3 Q And so when the officer presses the button, it
01:35:30 4 will now record going forward, and it will go
01:35:35 5 back and capture the prior 30 seconds; they
01:35:38 6 won't be deleted, but that those prior 30
01:35:42 7 seconds will not have audio with them?

01:35:44 8 A That's my understanding.

01:35:45 9 Q Okay. I would note that this policy in 2016
01:35:48 10 was amended in 2018 -- I'm going to make
01:35:50 11 reference to that in a second -- but referring
01:35:53 12 to this policy in 2016, that same paragraph
01:35:58 13 under Roman Numeral IIIA states, "The system
01:36:03 14 will also start automatically with the
01:36:05 15 activation of the squad's emergency lights or
01:36:07 16 when the squad reaches a speed of 65 miles per
01:36:11 17 hour. The camera must be recording when the
01:36:13 18 vehicle's emergency lights are activated or the
01:36:16 19 squad reaches a speed of 65 miles an hour for
01:36:20 20 the following:" And then there is A, B, C, D,
01:36:22 21 E and No. C is "all traffic stops." I guess,
01:36:26 22 first, as a matter of just drafting, it seems
01:36:31 23 to suggest that, if you read the literal
01:36:34 24 language, it should only be on during traffic
01:36:37 25 stops in which a speed has exceeded 65 miles an

01:36:43 1 hour. In 2018, the policy was amended, and
01:36:45 2 this was clarified that said all traffic
01:36:48 3 accident stops would be covered. When we
01:36:49 4 interviewed various members of the police
01:36:51 5 department, they seemed to suggest, all of
01:36:54 6 them, that it's -- everyone assumed that all
01:36:56 7 traffic stops were covered regardless of the
01:37:00 8 language here that might be a little confusing.

01:37:03 9 Can you tell me what your understanding
01:37:05 10 going back to 2016 and maybe comparing it to
01:37:07 11 the present of whether or not the camera needed
01:37:10 12 to be activated for traffic stops?

01:37:14 13 A The camera was supposed to be activated for
01:37:18 14 traffic stops, but when you turn on the lights,
01:37:20 15 it goes on automatically.

01:37:22 16 Q So it would be a little bit redundant to say
01:37:25 17 that the lights are activated, and then it must
01:37:28 18 be when lights are activated?

01:37:30 19 A Yes.

01:37:30 20 Q I suppose you could have, for example -- it's
01:37:32 21 correct, is it not, in the Officer Mensah first
01:37:36 22 shooting of Mr. Gonzales, on his way to the
01:37:41 23 scene, according to the official reports,
01:37:44 24 Officer Mensah turned off the recording on the
01:37:47 25 way to the incident. I think he explained that

01:37:49 1 he had troubles in the past where it would just
01:37:52 2 be continuously running. I'm not sure if that
3 was an issue in the very first shooting when it
01:37:54 4 was under investigation. But, in general, what
01:37:57 5 is your understanding of when officers are
01:38:00 6 required to be recording an interaction?

01:38:05 7 A Certainly any traffic stop we want them to be
01:38:09 8 recording it. When they are driving in a
01:38:14 9 pursuit, even if it's a slow-speed pursuit, we
01:38:18 10 want them to have that camera activated so we
01:38:20 11 can capture all that. Like in letter E,
01:38:24 12 "During any other contact the officer deems
01:38:27 13 appropriate," we've had people even on a
01:38:29 14 motorist assist, for example, we want to make
01:38:32 15 sure that it captures as much data as we can.
01:38:40 16 I once disciplined an officer because he turned
01:38:43 17 off -- not Mensah, but another officer turned
01:38:44 18 off the camera because he was driving too fast
01:38:46 19 for the conditions, and he didn't want us to
01:38:49 20 see how fast he was going because it records
01:38:52 21 how fast the car is going too, so he turned it
01:38:56 22 off because he was driving like 80 miles an
01:38:59 23 hour in a 30-mile-an-hour zone, so he
01:39:01 24 ultimately got disciplined for that.

01:39:03 25 Q What was the discipline, if you recall?

01:39:06 1 A I think it resulted in him leaving the
01:39:08 2 department because he had had a couple other
01:39:11 3 disciplines with me, and that was like the last
01:39:14 4 thing. I don't think he told the truth why he
01:39:17 5 turned off the camera, so he wound up leaving
01:39:20 6 before we terminated him. I think that pretty
01:39:27 7 much is everything that I've -- why we would
01:39:31 8 want those things running.

01:39:33 9 Q Okay. With respect to the Jay Anderson
01:39:38 10 shooting, obviously, we know that after the
01:39:40 11 shooting, Officer Mensah pressed the device on
01:39:44 12 his unit that was attached to his uniform, and
01:39:48 13 we have a recording going back 30 seconds
01:39:51 14 before the shooting and then audio picking up
01:39:54 15 at that point. In the immediate aftermath of
01:39:56 16 the shooting, Officer Mensah stated to a fellow
01:40:00 17 superior officer, a lieutenant who arrived on
01:40:02 18 the scene, the following statement about
01:40:04 19 whether or not he had tried to activate it, and
01:40:08 20 in context I believe they are talking about
01:40:10 21 prior to the shooting, Officer Mensah stated,
01:40:13 22 "I tried to hit the button a couple of times."
01:40:16 23 Then he goes on to say, "I tried to hit record.
01:40:19 24 Kept hitting record over and over, but it
01:40:22 25 wouldn't turn on." Let me ask you first, and

01:40:26 1 especially going back a few years, what kind of
01:40:30 2 mechanical issues have -- has your department
01:40:33 3 had with activating the squad video that you
01:40:39 4 are aware of?

01:40:39 5 A I haven't been aware of any real issues with
01:40:42 6 that. We have administrative people that are
01:40:47 7 assigned to repair those things. I haven't
01:40:49 8 heard that we've had problems with them. I
01:40:52 9 know that -- I think in this case, you know,
01:40:56 10 you can wear the device -- a lot of guys would
01:41:00 11 wear it on their epaulet, on their uniform
01:41:03 12 shirt. I think that's what Mensah did, so that
01:41:06 13 kind of flops around a little bit too because
01:41:08 14 the shirt -- so I think when he meant, he was
01:41:10 15 trying to get the button, you know -- I don't
01:41:13 16 know if he had his weapon out at that point or
01:41:16 17 what, but he was trying to reach for the
01:41:17 18 button, and I think that's what he was
01:41:19 19 referring to. I don't think we had any
01:41:20 20 problems with the video in that car.

01:41:22 21 Q Well, the issue, I guess, is should he have
01:41:25 22 started the recording prior to the shooting
01:41:27 23 because the complaint alleges this was a
01:41:31 24 traffic stop. Let's assume for now it was a
01:41:34 25 traffic stop and that he tried to activate as

01:41:39 1 he was approaching or as he was getting out of
01:41:42 2 the car. If an officer attempts to activate
01:41:45 3 the device during a traffic stop and it is not
01:41:48 4 functioning properly or because of the
01:41:51 5 circumstances he can't press the button
01:41:53 6 properly, or it's flopping around like you
01:41:55 7 described, I assume that's not a violation of
01:41:57 8 the policy if you attempt to comply?

01:41:59 9 A That would be correct.

01:42:03 10 Q Okay. Can you tell me whether or not you
01:42:05 11 believe an encounter in a vehicle for a county
01:42:10 12 ordinance of being in the park after dark
01:42:12 13 constitutes a traffic stop?

01:42:13 14 A This was not a traffic stop, in my opinion.

01:42:16 15 Q And why is that?

01:42:17 16 A Because he was just stopping -- he saw the
01:42:20 17 person in the car. He was just stopping to
01:42:22 18 make an inquiry to see if everything was okay.

01:42:27 19 Q Okay.

01:42:29 20 MR. BISKUPIC: Anybody on the whether
01:42:32 21 it should have been activated?

01:42:36 22 MR. MUELLER: Is there something
01:42:38 23 comparable to this where, again, he would
01:42:40 24 choose not to activate the camera? What other
01:42:42 25 kind of situations would compare?

01:42:44 1 THE WITNESS: To not activate it?

01:42:46 2 MR. MUELLER: Uh-huh.

01:42:47 3 THE WITNESS: You know, let's just
01:42:51 4 say somebody is in the parking lot changing the
01:42:56 5 tire or something.

01:42:57 6 MR. MUELLER: On the road too, right?

01:42:59 7 THE WITNESS: Well, on the road, then
01:42:59 8 you probably put on the emergency lights just
01:43:02 9 because you want to protect yourself, but in a
01:43:05 10 parking lot you probably would not, maybe just
01:43:07 11 put the spotlight on, so I think now the way
01:43:11 12 things are, and, of course, we are in the
01:43:12 13 process of getting body cameras.

01:43:17 14 MR. MUELLER: At a great expense, I
01:43:19 15 guess.

01:43:19 16 THE WITNESS: About \$700,000 worth,
01:43:21 17 but I think everything would be recorded more
01:43:23 18 now.

01:43:25 19 BY MR. BISKUPIC:

01:43:26 20 Q I would like to move now to the issue of the
01:43:32 21 complaint of failing to render medical aid.
01:43:36 22 I'm working a little backwards back to the
01:43:38 23 shooting here. I hope that doesn't cause any
01:43:40 24 confusion, but the issue that was raised is the
01:43:44 25 Policy 13-01, which is your use of force

01:43:47 1 policy. I'll give you a copy of this for each
01:43:49 2 of you. If you turn to the page, I believe
01:43:58 3 it's page 8, which has the rendering aid after
01:44:12 4 deadly force. Deadly starts on page 7 and goes
01:44:14 5 to page 8. So what I would like to do is show
01:44:17 6 one of the videos, so we are going to take a
01:44:19 7 break off the record. I'll show a video of one
01:44:23 8 of the officers which, again, starts after
01:44:27 9 fellow officers have pulled up to the scene,
01:44:29 10 and Mr. Anderson has already been shot and some
01:44:34 11 of the activities before aid is rendered.

01:44:38 12 (Playing video.)

01:50:43 13 BY MR. BISKUPIC:

01:50:47 14 Q We are back on the record after watching a
01:50:49 15 video that's from Squad 318, and the video is
01:50:54 16 designated P219, Squad 318.

01:50:59 17 Chief, as I piece together the
01:51:00 18 contention on failure to render aid under the
01:51:04 19 deadly force policy, the shooting takes place,
01:51:08 20 according to the dispatch, within the first
01:51:10 21 minute. After the shooting, Officer Mensah is
01:51:15 22 notifying dispatch that the suspect is down.
01:51:18 23 Within the same minute the police department
01:51:20 24 contacts Wauwatosa Fire Department and directs
01:51:23 25 paramedics to the scene. Another video -- oh,

01:51:29 1 also within that minute, Officer Mensah
01:51:31 2 responds to a direct question from dispatch
01:51:33 3 about whether it is safe for the paramedics to
01:51:36 4 enter the park. He says it is. So between
01:51:39 5 that point and then on the video it ends with
01:51:43 6 the officers approaching to administer the
01:51:45 7 first aid kit at 3:13, a couple minutes pass,
01:51:50 8 they take another video, and according to the
01:51:53 9 reports, the paramedics arrive at approximately
01:51:55 10 3:15. So if we break down the eight minutes
01:52:01 11 that pass between the time of the shooting --
01:52:03 12 approximately eight minutes and the paramedics
01:52:05 13 arriving on the scene, it seems to -- our
01:52:09 14 investigation that during the first three
01:52:11 15 minutes Officer Mensah moves away from the
01:52:14 16 Anderson vehicle back towards his own squad and
01:52:16 17 does not reapproach Anderson's vehicle until
01:52:19 18 backup has arrived.

01:52:22 19 Let's start with that segment there.
01:52:24 20 He has a shooting, the policy said, the deadly
01:52:28 21 force policy on page 8 says that "After the
01:52:32 22 situation has stabilized and the suspect is
01:52:35 23 under control, the officer shall: Sub A, check
01:52:38 24 for injuries and render first aid, if
01:52:41 25 necessary." So I guess I want to break down

01:52:45 1 the time periods, and during this first three
01:52:47 2 minutes, was it appropriate for Officer Mensah
01:52:49 3 to move away from the vehicle and await for
01:52:52 4 backup?

01:52:53 5 A Under that circumstance, it would appear that
01:52:55 6 that would be appropriate because he's by
01:52:57 7 himself. He's just been involved in a
01:53:00 8 shooting. He doesn't know if there is anybody
01:53:02 9 else close by. He doesn't know if there is --
01:53:05 10 somebody else that's in the park that could be
01:53:08 11 associated with this person. He does not know
01:53:12 12 if the guy -- I think he says that "suspect is
01:53:18 13 down." I'm not sure if that was what he said.

01:53:21 14 Q I believe so.

01:53:22 15 A That doesn't mean that he is incapacitated; he
01:53:27 16 just wasn't moving at that point, so he waited
01:53:29 17 until he got his back up, so I don't have a
01:53:31 18 problem with that.

01:53:32 19 Q Okay. And then after that three-minute period
01:53:36 20 -- and, again, these are approximate times --
01:53:37 21 according to the video, Officers Salyers and
01:53:45 22 Mills arrive on the scene. So you can see from
01:53:48 23 the video, it appears they are unaware of
01:53:50 24 Anderson's immediate condition, and they appear
01:53:53 25 concerned that Anderson's still in the vehicle

01:53:55 1 within reach of the firearm. Officer Mensah,
01:53:59 2 on the other hand, seems more to be wandering
01:54:02 3 around. If the officer believes he is
01:54:04 4 incapacitated, the suspect, how do you view
01:54:09 5 this policy? Should he have approached -- I
01:54:12 6 mean, we know he has ultimately shot
01:54:18 7 Mr. Anderson in the head three times, or near
01:54:20 8 the head three times. He may be dead. There
01:54:23 9 may be nothing to do. What obligation does an
01:54:26 10 officer have, and, again, balancing stabilizing
01:54:29 11 the situation and administering the first aid,
01:54:33 12 you know, what was done here, and, I guess,
01:54:36 13 what else could have been done?

01:54:38 14 A The officer's first obligation is to protect
01:54:41 15 himself. Could he have approached after he
01:54:47 16 radioed in that the subject was down? That's a
01:54:51 17 matter of conjecture. I'm not sure that would
01:54:53 18 be appropriate because he didn't have a backup
01:54:55 19 at that point. He waited for the other guys
01:54:59 20 that backed him up, and when you saw on the
01:55:02 21 video, when the three of them staged together
01:55:04 22 and they walked --

01:55:05 23 Q In single file?

01:55:06 24 A Yup. That's appropriate. That's the way their
01:55:08 25 training is, the way they walked up there

01:55:11 1 because there was no cover around, so I thought
01:55:13 2 that was good what they did. If you look at
01:55:15 3 the policy, you know, it also says we should
01:55:18 4 have handcuffed the person too just to make
01:55:24 5 sure because if we didn't know he was deceased
01:55:27 6 at that point, you don't know if he can still
01:55:29 7 do something else. One of the other officers
01:55:32 8 also said that he had no pulse, and it wasn't
01:55:35 9 until they went up there again, and they said
01:55:40 10 he wasn't breathing.

01:55:42 11 You know, of course, the fire
01:55:43 12 department is not going to come in there until
01:55:46 13 they know that the situation is stable, because
01:55:48 14 they were staging just outside the park. So I
01:55:51 15 don't know if they could have got there a
01:55:53 16 little bit quicker. I'm not sure how close
01:55:54 17 they were when those guys made their approach
01:55:58 18 either.

01:55:58 19 Q Okay. I'm assuming when dispatch calls for the
01:56:01 20 fire department, that includes, obviously, the
01:56:03 21 paramedics?

01:56:04 22 A Yes.

01:56:05 23 Q The other complaint cites the Wisconsin Statute
01:56:10 24 940.921, which is a requirement under state
01:56:14 25 law; it makes it a Class A misdemeanor for an

01:56:17 1 officer to intentionally fail to render aid.

01:56:20 2 The statute further notes that the officer must

01:56:23 3 possess the knowledge and ability to render the

01:56:25 4 necessary aid. I don't have that explicitly in

01:56:29 5 your policy, it's in the state statute. You

01:56:34 6 know, can you tell us what, if any, training an

01:56:38 7 officer would have on what to do with multiple

01:56:40 8 head wounds? It doesn't seem like something

01:56:44 9 that CPR or first aid would be able to make --

01:56:47 10 A We now carry the first aid bags to stop like a

01:56:51 11 sucking chest wound or the packs that you can

01:56:53 12 put in there. As far as a head wound and all

01:56:56 13 that, I'm not sure that there is much somebody

01:56:59 14 can do with that because this subject had

01:57:01 15 multiple head wounds. And I think they saw

01:57:04 16 that when they got up close. You know, police

01:57:09 17 officers, they get -- we get first aid

01:57:12 18 training, you know, but the usual CPR, Heimlich

01:57:15 19 maneuver things, and if somebody's bleeding,

01:57:18 20 you know, direct pressure, but there wasn't a

01:57:20 21 lot of blood in this particular case, I don't

01:57:22 22 believe, so I'm not sure that they would have

01:57:24 23 had the wherewithal to know what else to do.

01:57:26 24 Q There is a little bit of a delay where they

01:57:27 25 come back from the car and they put away their

01:57:30 1 weapons, and that's when one of the officers, I
01:57:33 2 think, gets one of the first aid -- or two of
01:57:35 3 them go up there and one them says, I'll see if
01:57:39 4 there is anything we can do. Is there anything
01:57:41 5 you can tell us about what you saw in the video
01:57:44 6 and in the delay of a couple minutes, given the
01:57:47 7 totality of the circumstances, whether that
01:57:50 8 implicates anything under the policy, in your
01:57:52 9 view?

01:57:52 10 A I don't think so. When you look at that, you
01:57:56 11 always look at the clock and you say, "Boy, I
01:57:58 12 wish we could have done something sooner than
01:58:00 13 we did," but under the circumstances, with the
01:58:03 14 officer backing away after being involved in a
01:58:06 15 deadly-force confrontation and trying to assess
01:58:09 16 what he's got and waiting for backup, and, of
01:58:13 17 course, when the backup comes, you know, they
01:58:15 18 are going to -- you heard them say, well,
01:58:17 19 should we approach or not? What are we going
01:58:19 20 to do? Because they are trying to formulate
01:58:21 21 their plan because they are not sure if the
01:58:23 22 guy's still alive or not either; so -- as I
01:58:27 23 said, I wish we could have done it sooner, but
01:58:30 24 under the circumstances, I'm not sure it could
01:58:33 25 have been done any sooner, and I don't think it

01:58:35 1 would have made much difference either,
01:58:37 2 although I'm not a doctor.

01:58:39 3 Q From strictly a law enforcement standpoint, was
01:58:42 4 it better that Officer Mensah was not the
01:58:44 5 person who reached in and took the gun out of
01:58:47 6 the vehicle?

01:58:48 7 A Yes.

01:58:49 8 Q Why?

01:58:50 9 A I think some of the allegations that we have
01:58:54 10 already seen is people think that we
01:58:56 11 manipulated the weapon or whatever, and I think
01:58:58 12 it was Steve Mills that took the gun. We wish
01:59:01 13 he would have left the gun just as it was
01:59:03 14 because later on people say, well, you moved
01:59:05 15 the gun, and it wasn't really in his possession
01:59:07 16 and so on. But you heard them on the video
01:59:11 17 say, get the gun to make it safe or whatever.
01:59:15 18 They wanted to get it out of the way, so I
01:59:18 19 think if Mensah would have done it, they
01:59:20 20 probably -- somebody would have said that he
01:59:21 21 just was positioning it in a different place so
01:59:25 22 it would make it look like it was self-defense
01:59:27 23 or whatever, so I'm glad that he didn't touch
01:59:31 24 it.

01:59:31 25 Q Some of the legal research that I've done on

01:59:33 1 the issue of just nationally delays in
01:59:37 2 administering medical aid, the courts have said
01:59:40 3 one of the main focuses is what's taking place
01:59:43 4 during the delay. Is it legitimate law
01:59:46 5 enforcement concerns, regarding safety or
01:59:49 6 otherwise, addressing the situation on the
01:59:51 7 scene or is there some improper purpose; for
01:59:54 8 example, there is a case out of the Eighth
01:59:58 9 Circuit Court of Appeals in which during the
02:00:00 10 delay, the officers manipulated the evidence
02:00:03 11 improperly and then downgraded the injuries,
02:00:05 12 and the court said that clearly rose to the
02:00:07 13 level of a constitutional violation.
02:00:09 14 Conversely, at the other end of the spectrum,
02:00:11 15 the courts have talked about that if an officer
02:00:14 16 knows the paramedics have been called and they
02:00:16 17 do whatever they can under the circumstances;
02:00:18 18 they don't have a to do it personally if other
02:00:20 19 officers are there. In this matter, as you
02:00:24 20 looked at that video and you understand the
02:00:26 21 circumstances beyond stating that, yes, you
02:00:30 22 always wish you could have moved a little
02:00:32 23 quicker, can you address whether or not during
02:00:34 24 the delay legitimate law enforcement concerns
02:00:37 25 were being addressed?

02:00:39 1 A I think they were because Mensah had just been
02:00:43 2 involved in this confrontation, so he's off
02:00:46 3 camera, but, you know, this is the second time
02:00:48 4 he's been involved in one of these incidents,
02:00:50 5 so he's probably thinking, what happened here,
02:00:54 6 trying to gather his thoughts, and, you know,
02:00:57 7 he did have the wherewithal to put that camera
02:00:59 8 -- turn it on right after the shooting, so he
02:01:02 9 was thinking rationally, and he wasn't
02:01:04 10 panicking, I don't believe. He called the
02:01:07 11 backups in there. Before the shooting even
02:01:11 12 took place, he said that the guy's got a gun,
02:01:13 13 so step it up. He wanted that backup in a
02:01:16 14 hurry.

02:01:16 15 Q What does "step it up" mean to the Wauwatosa
02:01:19 16 police?

02:01:19 17 A Get here in a hurry.

02:01:20 18 Q Backup?

02:01:21 19 A Yup.

02:01:22 20 Q Where does that phrase originate from?

02:01:25 21 A I don't know. It's always been there. I never
02:01:27 22 used it in my career, but every time somebody's
02:01:29 23 asking for a backup, they will say "step it
02:01:31 24 up"; that means, all right, guys, put on the
02:01:33 25 lights and sirens, I need help right now.

02:01:36 1 MR. BISKUPIC: Anybody else on the
02:01:37 2 issue?

02:01:38 3 MS. JACOBS: I have just a question.
02:01:40 4 When you are talking about the delay, there is
02:01:44 5 the delay between the time of the shooting and
02:01:48 6 when backup gets there, right, that Mensah's
02:01:51 7 alone?

02:01:52 8 THE WITNESS: Uh-huh.

02:01:53 9 MS. JACOBS: But then -- and then the
02:01:57 10 officers approach the car, open the door,
02:02:01 11 secure the gun. Can you address the delay from
02:02:05 12 the point of time that the gun is out of the
02:02:07 13 car, they walk -- they all go back to the
02:02:11 14 squad, sort of standing around trying to figure
02:02:14 15 out what to do, talking, whatever, and then one
02:02:17 16 of the officers kind of eventually walks back
02:02:21 17 to Anderson. Can you address that delay? What
02:02:25 18 legitimate law enforcement purpose or thing is
02:02:29 19 happening once they have seen Anderson; they
02:02:33 20 have opened the door; they got rid of the gun.
02:02:36 21 Why not render aid then?

02:02:37 22 THE WITNESS: I think what I heard
02:02:38 23 was that he did not appear to be breathing at
02:02:43 24 that point, so they probably -- and this is --
02:02:46 25 again, I'm assuming because I wasn't there.

02:02:48 1 They were probably thinking there is nothing we
02:02:50 2 can do for him right now; he's not breathing;
02:02:54 3 saw the wounds on him. I mean, I didn't see
02:02:56 4 the wounds on him until I saw him at the ME's
02:03:00 5 office, but they probably realized there was
02:03:02 6 nothing more than they can do.

02:03:05 7 MR. BISKUPIC: "ME" meaning medical
02:03:06 8 examiner?

02:03:10 9 THE WITNESS: Yes. Now, I'm just
02:03:11 10 speculating because I didn't personally ask
02:03:13 11 those guys that question.

02:03:14 12 MS. JACOBS: Right. And then you
02:03:16 13 also said at the time that Mensah is there
02:03:19 14 alone and is not reapproaching the vehicle,
02:03:23 15 that at least in part, you said that -- well,
02:03:30 16 you said what he says on the audio is "suspect
02:03:34 17 down," but the down doesn't necessarily mean
02:03:38 18 incapacitated?

02:03:39 19 THE WITNESS: Correct.

02:03:40 20 MS. JACOBS: Okay. But given what
02:03:42 21 you just described, given that he knew he had
02:03:45 22 shot him in the head, it sounds like, and given
02:03:49 23 that by the time they go back to the car, the
02:03:52 24 other officers go back to the car, they assume
02:03:56 25 he's incapacitated, should Mensah have

02:04:02 1 appreciated that he was incapacitated in those
02:04:05 2 first moments?

02:04:07 3 THE WITNESS: It's hard to think
02:04:08 4 about what he was going through at that point
02:04:10 5 because I think he described that he saw the --
02:04:15 6 felt that he saw the shots go into Anderson
02:04:18 7 when he fired it. I don't know if that meant
02:04:20 8 that he saw that they were head shots or not.
02:04:24 9 So he did his shooting, and then you see him
02:04:27 10 back away, so I'm thinking at that point he's
02:04:29 11 probably trying to get back in the shadows
02:04:31 12 because he doesn't know if he's going to be
02:04:34 13 attacked from another area where if the guy is
02:04:37 14 indeed incapacitated totally, so I'm sure there
02:04:41 15 was a lot of things that were going through his
02:04:44 16 mind at that point. I'm not certain I would
02:04:47 17 have wanted him to approach the car if he
02:04:50 18 wasn't certain right then and there. He wants
02:04:53 19 to make sure he's safe.

02:04:55 20 BY MR. BISKUPIC:

02:04:55 21 Q Anything you can tell us about training on this
02:04:58 22 particular -- or prior discipline or
02:05:00 23 application of this policy -- first of all, has
02:05:04 24 any officer in your time been disciplined for
02:05:06 25 failure to timely and properly administer

02:05:10 1 medical aid after a shooting?

02:05:12 2 A No. Since this particular incident, we have
02:05:18 3 been involved in several situations where the
02:05:20 4 officers have immediately transitioned into
02:05:23 5 doing medical aid, but the difference is, there
02:05:27 6 was more officers on the scene. You know,
02:05:31 7 if -- we haven't had anywhere that a guy is by
02:05:35 8 himself and had to think about that. The times
02:05:38 9 where its happened since, there has been three
02:05:39 10 or four officers together, and they have shot,
02:05:41 11 and then they immediately started doing the
02:05:44 12 aid. And one of them would be the Alvin Cole
02:05:50 13 case. Mensah was involved in that one, but the
02:05:53 14 other officers that were there immediately
02:05:55 15 started rendering aid.

02:05:58 16 Q Is there anything about the training on that
02:06:01 17 topic -- I mean, to a nonlaw enforcement
02:06:05 18 officer, there is a bit of an anomaly. If you
02:06:11 19 are justified to use deadly force, you get to
02:06:13 20 use it until the threat is it stopped, and
02:06:16 21 after that you are supposed to transition to
02:06:20 22 trying to save the person you just shot?

02:06:21 23 A Yes.

02:06:22 24 Q How is that addressed in training, if you know?

02:06:24 25 A Well, we have done that because we have taught

02:06:31 1 our guys on the range and so on and in their
02:06:35 2 inservice training that that's exactly what you
02:06:38 3 have to do because, as I said a moment ago,
02:06:41 4 that has happened, so they immediately go into
02:06:43 5 that mode, and that's hard to do, but first you
02:06:46 6 have to make sure you are safe, and that's the
02:06:47 7 whole issue with Mensah; he didn't know if he
02:06:50 8 was safe or not.

02:06:50 9 Q Is that what -- when the policy talks about the
02:06:54 10 situation being stabilized, does that mean that
02:06:56 11 it becomes safe?

02:06:57 12 A I think so.

02:06:57 13 Q Obviously, as Ms. Jacobs said, removal of the
02:07:02 14 firearm?

02:07:02 15 A Yes.

02:07:05 16 MR. DEMARCO: Chief, I know you have
02:07:07 17 written policies and then sometimes you have
02:07:10 18 altered written policies. I was wondering how
02:07:13 19 often are they -- the written policies amended
02:07:17 20 to show the other stuff? This is just -- I
02:07:22 21 think -- you guys pipe up if I'm speaking
02:07:25 22 incorrectly, but I remember speaking to:
02:07:28 23 Lieutenant Roy, the three of us, and he said
02:07:35 24 that if you have a situation where -- what
02:07:39 25 Mensah did on the 23rd of July, I think it was,

02:07:42 1 and he's alone, he's supposed to wait for two
02:07:45 2 other officers to show up, and -- before they
02:07:51 3 would approach the car. From what Steve read
02:07:56 4 there in the policies, I don't hear that in
02:07:58 5 there, but this is what Lieutenant Roy told us.
02:08:02 6 It was in early August, maybe. Is that a
02:08:07 7 policy that is a firm policy, or is that one
02:08:12 8 that's not so firm?

02:08:15 9 THE WITNESS: That might be what
02:08:17 10 they're teaching them when they are out there
02:08:18 11 doing those kind of things now, but if we don't
02:08:21 12 have it in the written policy, then I'm not
02:08:23 13 sure.

02:08:25 14 MR. DEMARCO: Do you recall that at
02:08:26 15 all?

02:08:26 16 MR. MUELLER: I recall the part where
02:08:28 17 you are not to approach until you are secure in
02:08:31 18 the situation, but I can't remember if it's
02:08:34 19 waiting for two or just waiting for backup.

02:08:36 20 MR. DEMARCO: I remember him saying
02:08:38 21 that there was a group of three that would
02:08:41 22 approach the car, and he included himself in
02:08:43 23 there because, I think it was Salyers and Mills
02:08:47 24 arrived, and he was the third one. You can see
02:08:50 25 Mensah wandering with them, trailing a little

02:08:52 1 bit, but he went with them to approach the car,
02:08:56 2 so I was just wondering.

02:08:58 3 THE WITNESS: I'm not certain on
02:08:59 4 that.

02:09:01 5 MR. MUELLER: You mentioned first aid
02:09:03 6 training. When would that have been done,
02:09:06 7 during what part? I didn't see that
02:09:08 8 specifically in his training records.

02:09:14 9 THE WITNESS: We just have had first
02:09:16 10 aid training in the last couple of years. I
02:09:17 11 mean, over a period of time when you are in the
02:09:20 12 academy and so on, you get the CPR training,
02:09:22 13 and then we've had some other CPR training. We
02:09:25 14 have got one officer who is a certified
02:09:27 15 trainer, so he would get them through on shift
02:09:30 16 or whatever. But we just started giving
02:09:33 17 everybody their individual first aid kits.
02:09:35 18 That was just within the last year.

02:09:38 19 MR. MUELLER: So they cover first aid
02:09:39 20 pretty heavily during recruit training, the 720
02:09:43 21 hours?

02:09:44 22 THE WITNESS: I think so.

02:09:45 23 MR. MUELLER: Okay.

02:09:49 24 MR. BISKUPIC: We are going to take
02:09:49 25 another break here to put on the video of the

02:09:52 1 shooting itself of Mr. Anderson, in particular,
02:09:55 2 as I indicated previously to your counsel and
02:09:58 3 you, I want to focus on the infrared version,
02:10:01 4 which I think gives us most movements of
02:10:06 5 Mr. Anderson. So we will stop there and turn
02:10:09 6 on the video.

02:10:13 7 (Playing video.)

02:12:13 8 BY MR. BISKUPIC:

02:12:13 9 Q We are back on the record. We played one of
02:12:16 10 the videos of the actual shooting of
02:12:19 11 Mr. Anderson, and I want to transition into the
02:12:22 12 question of whether or not this was a use of
02:12:23 13 excessive force in violation of Policy 13-01,
02:12:28 14 which is your use of deadly force policy that
02:12:30 15 was in place at the time of this shooting.
02:12:32 16 Also to correct one of the statements
02:12:34 17 Mr. DeMarco made, the shooting was in June, not
02:12:38 18 July of 2016.

02:12:40 19 So, Chief, I want to start out first by
02:12:43 20 summarizing the legal standards as I understand
02:12:45 21 them in the policy, federal law, state law, and
02:12:48 22 under the particular facts of this case. I
02:12:51 23 broke down the question into three parts: Did
02:12:55 24 Officer Mensah reasonably perceive a threat of
02:12:58 25 great bodily harm? Was his subsequent use of

02:13:01 1 deadly force reasonably necessary to respond to
02:13:03 2 the threat? Did he act in good faith? The
02:13:07 3 district attorney's analysis, which I'll
02:13:09 4 incorporate into my report, broke the question
02:13:11 5 down into two points: Did the officer have an
02:13:15 6 actual subjective belief that deadly force was
02:13:18 7 necessary to prevent imminent death or great
02:13:22 8 body injury to himself or others? And No. 2,
02:13:25 9 was the belief objectively reasonable? I
02:13:27 10 think, as you know, the district attorney found
02:13:29 11 that it was objectively reasonable.

02:13:31 12 So the facts as we have come to
02:13:34 13 understand from the video, the statements, the
02:13:39 14 radio dispatch information, and the other
02:13:41 15 sources is basically Officer Mensah approaches
02:13:43 16 the vehicle shortly after 3:00 a.m., sees a
02:13:47 17 firearm within reach on the front passenger
02:13:51 18 seat of the vehicle. According to Officer
02:13:53 19 Mensah -- and, again, we don't have recordings
02:13:56 20 of these -- he made the following commands:
02:13:59 21 "Hands up. I see the gun. Don't reach for it.
02:14:02 22 Stop reaching for the weapon." So I want to
02:14:05 23 stop there and focus on the infrared version
02:14:08 24 that we just watched. It appears to show,
02:14:12 25 assuming that Officer Mensah accurately relates

02:14:15 1 his commands, that Mr. Anderson continued to
02:14:19 2 move his hands and immediately before the
02:14:23 3 shooting moved his hands and body towards the
02:14:26 4 firearm. Can you give us your analysis of what
02:14:31 5 happened in that stage of the video, the
02:14:34 6 approach to the vehicle, and, in particular,
02:14:36 7 referencing the use of deadly force under
02:14:39 8 Policy 13-01?

02:14:41 9 A When I watched the video, after I read Officer
02:14:45 10 Mensah's statement, you see Anderson had put --
02:14:48 11 because Mensah said he told him to put his
02:14:50 12 hands up; you see his hands up. And then it
02:14:52 13 seemed like on two different occasions, his
02:14:55 14 hands started dropping, and he said put them
02:14:57 15 back up, and then he put them back up, and then
02:14:57 16 in the, I think it was the third time, all of
02:15:02 17 sudden you see him go down, and that's when
02:15:04 18 Mensah said he reached for the weapon.

02:15:06 19 Q So is the use of deadly force appropriate if an
02:15:10 20 officer believes that a suspect is reaching
02:15:12 21 towards a weapon within reach?

02:15:14 22 A Yes. If he feels that his life is going to be
02:15:18 23 in danger or he feels that, you know, great
02:15:25 24 bodily harm will come to him or somebody else,
02:15:28 25 yes.

02:15:28 1 Q Okay. Well, let's start with -- I guess my
02:15:30 2 first question is, did Officer Mensah
02:15:33 3 reasonably perceive -- we know he felt that way
02:15:36 4 because he ultimately shoots -- but was it
02:15:39 5 reasonable for him under these circumstances to
02:15:41 6 perceive a threat of great bodily harm, in your
02:15:46 7 view?

02:15:47 8 A He said he saw the gun within reach of the
02:15:49 9 driver, so he said he even radioed in, "He has
02:15:52 10 a gun. Step it up."

02:15:54 11 Q And does a gun within reach create a reasonable
02:16:02 12 threat of imminent great bodily harm or death
02:16:05 13 to himself, the suspect has the gun within
02:16:08 14 reach?

02:16:10 15 A As long as -- if the gun is within reach, it's
02:16:13 16 not a shoot situation as long as the guy has
02:16:18 17 his hand up. As long as he put his hand up
02:16:21 18 there, there is not a great bodily harm threat
02:16:23 19 here, I'm not going to shoot. If he starts
02:16:26 20 putting his hand down, and Mensah says, "Put
02:16:29 21 your hand back up," which he does, and then
02:16:32 22 when he starts going down again, and he makes
02:16:33 23 that movement for the gun, it appears, that
02:16:35 24 changed the situation.

02:16:36 25 Q Were the verbal commands necessary before

02:16:42 1 Officer Mensah used deadly force?

02:16:48 2 A Were they necessary?

02:16:51 3 Q Under these circumstances, given what you've
02:16:57 4 known about watching the video.

02:16:58 5 A Yeah, I think had Anderson followed the
02:17:05 6 commands and not reached for the weapon, he
02:17:06 7 would not have got shot.

02:17:07 8 Q If Mr. Anderson was reaching for the weapon, is
02:17:13 9 it reasonably appropriate for an officer to
02:17:15 10 respond by shooting him?

02:17:16 11 A It would be different if it was a knife, no,
02:17:20 12 but since it was a gun, and Mensah had seen the
02:17:22 13 gun, yes.

02:17:27 14 Q The complainant contends that Officer Mensah's
02:17:31 15 version is not credible because he sets forth a
02:17:34 16 verbal exchange with Mr. Anderson that's not
02:17:36 17 captured by the video and the audio. For
02:17:39 18 example, the complainant argues that no verbal
02:17:41 19 warning was given even though Officer Mensah
02:17:45 20 states that he gave such warning; likewise,
02:17:48 21 Officer Mensah stated that Anderson denied
02:17:50 22 having identification on him when, in fact, he
02:17:52 23 did have identification in his pocket. It
02:17:56 24 creates a dilemma. Obviously, we only know
02:17:59 25 orally what Officer Mensah relates to us about

02:18:02 1 what was said because it wasn't on video. Is
02:18:07 2 there anything on the video that struck you as
02:18:09 3 inconsistent with what Officer Mensah
02:18:12 4 contended?

02:18:14 5 A No. What would be inconsistent if, you know --
02:18:19 6 what he says what Anderson did. Anderson
02:18:24 7 wouldn't have had his hand up if Mensah hadn't
02:18:26 8 given him the command. Anderson drops his hand
02:18:32 9 down, and Mensah says, put your hand back up,
02:18:34 10 so it seems consistent that he was getting the
02:18:37 11 commands from the police officer.

02:18:39 12 Q Did the officer, whether in this specific
02:18:43 13 instance or any other with similar facts where
02:18:43 14 a gun is in reach, does an officer have to wait
02:18:46 15 until the firearm is in the suspect's hand
02:18:50 16 before firing?

02:18:51 17 A Wait until it's in his hand? If the officer
02:18:56 18 feels that he is going to be shot, no, he does
02:18:58 19 not have to wait.

02:19:00 20 Q Is that just something that comes from the
02:19:03 21 training of the officers, or is that implied in
02:19:06 22 the policy; is it explicit in the policy? I
02:19:09 23 mean, the policy uses the word of you are at
02:19:12 24 risk of great bodily harm or substantial risk.
02:19:16 25 I guess my question to you is, how much risk

02:19:19 1 was there for Officer Mensah from a reasonable
02:19:22 2 objective standpoint of a gun, you know, within
02:19:26 3 hand's reach from the driver's side or the
02:19:30 4 passenger side?

02:19:30 5 A Well, I think it was on the console right close
02:19:33 6 to where the driver could reach it. So
02:19:42 7 Anderson could have reached for the weapon and
02:19:43 8 pulled it up really fast and the officer
02:19:45 9 wouldn't have a chance to defend himself; so,
02:19:47 10 yes, the answer is he was justified, in my
02:19:55 11 opinion.

02:19:55 12 MR. NEUREUTHER: Is there anything in
02:19:58 13 the training or the policies that clearly
02:20:00 14 indicate that the suspect does not have to have
02:20:02 15 the weapon in his hand, and you, the police
02:20:06 16 officer, will feel threatened? And the only
02:20:12 17 reason I ask is because I'm not sure too.

02:20:16 18 THE WITNESS: I think you go a lot by
02:20:18 19 what the officer's perception on the scene is
02:20:21 20 and what the suspect's actions are. I don't
02:20:28 21 know like in Anderson's case how fast he could
02:20:30 22 reach for that weapon and shoot it. For police
02:20:32 23 officers, we are all trained. We can do it
02:20:34 24 really fast if you have to, get a gun in your
02:20:37 25 hand; we can all do that, so it can happen in

02:20:41 1 a -- less than two seconds, I imagine, you
02:20:43 2 could have that gun and you start shooting at
02:20:46 3 Mensah, so I think it's how you perceive -- if
02:20:52 4 you perceive that you are -- if you perceive
02:20:58 5 that you are in danger of great bodily harm or
02:21:00 6 death from that, then you are justified.

02:21:04 7 MR. NEUREUTHER: Okay.

02:21:04 8 BY MR. BISKUPIC:

02:21:05 9 Q Can it be justified but still be aggressive?

02:21:08 10 A I'm not sure I understand.

02:21:10 11 Q Sure. I mean, officers have broad
02:21:12 12 discretion --

02:21:13 13 A Yes.

02:21:13 14 Q -- certainly on deadly force, and there may be
02:21:17 15 circumstances, identical circumstances where
02:21:20 16 one officer may choose to fire, and an
02:21:23 17 officer -- a second officer may not choose to
02:21:25 18 fire. The officer who doesn't choose to fire
02:21:30 19 may perceive things slightly differently, both
02:21:33 20 may be legal, justified under the policy. I
02:21:35 21 guess in terms of getting back to the question
02:21:37 22 of discretion, is it unfair to characterize one
02:21:46 23 officer as maybe more aggressive than other
02:21:49 24 officers?

02:21:51 25 A I'm not sure I would use the word "aggressive."

02:21:53 1 I think for your first part where another
02:21:57 2 officer might perceive something differently,
02:22:00 3 you know, if we look out the window and we see
02:22:02 4 somebody, it looks like they are breaking into
02:22:04 5 a car, sometimes a normal citizen would say,
02:22:09 6 well, it just looks like a guy is by a car.
02:22:12 7 Most cops will look at that and say, that guy's
02:22:15 8 breaking into the car. They just look at
02:22:17 9 things differently; so -- but generally police
02:22:20 10 officers recognize that there's a threat, there
02:22:23 11 might be some little nuances here and there,
02:22:24 12 but overall they would recognize a threat.

02:22:27 13 Q Okay. As part of the investigation that we
02:22:29 14 conducted, we tried to recreate what
02:22:32 15 Mr. Anderson did earlier in the day, and it
02:22:34 16 appears that he got himself fairly heavily
02:22:37 17 intoxicated. He and a friend went to a bar,
02:22:40 18 drank, I think, \$50 worth of whiskey or cognac.
02:22:45 19 Obviously, we know from the medical examiner
02:22:47 20 report that he also consumed marijuana. Family
02:22:50 21 and friends say he was a regular consumer of
02:22:53 22 marijuana and had smoked quite a bit and also
02:22:57 23 had smoked outside the bar when he was
02:22:59 24 consuming alcohol. I think his alcohol content
02:23:03 25 was well above the legal limit even several

02:23:06 1 hours later.

02:23:07 2 A .11.

02:23:08 3 Q Even after he was taken to the medical
02:23:12 4 examiner. So I guess from my perspective
02:23:15 5 watching the video knowing those facts, and
02:23:19 6 conceding that Officer Mensah did not know
02:23:20 7 those facts at the time, but it certainly
02:23:25 8 creates an ambiguity in my mind that
02:23:28 9 Mr. Anderson may well have been falling asleep
02:23:31 10 or under the influence, and those body
02:23:33 11 movements that we saw may not have been clearly
02:23:36 12 him reaching for the firearm. Assuming those
02:23:41 13 facts, and, again, I don't have any reason to
02:23:43 14 believe that you knew those facts any more than
02:23:47 15 Officer Mensah, is it fair to say that that
02:23:49 16 does create some ambiguity in the situation?

02:23:53 17 A Not as far as the officer looks at things.

02:23:56 18 Q Why is that?

02:23:56 19 A Because the officer doesn't know that Anderson
02:23:59 20 is maybe under the influence of marijuana
02:24:01 21 and/or liquor; he doesn't know that. He's just
02:24:04 22 seeing what the guy's actions are. You know,
02:24:06 23 if you go back to -- and I know we are not
02:24:08 24 talking about the Gonzales, but Mensah was
02:24:11 25 involved in that one, there he's being

02:24:13 1 threatened by a guy with a sword, and that
02:24:17 2 particular -- Gonzales, his blood alcohol was
02:24:19 3 .26, you know, so, the officers -- because
02:24:22 4 there were two officers there. They have no
02:24:24 5 way of knowing that. A guy attacks them with a
02:24:27 6 sword. What are you supposed to do? So I
02:24:29 7 don't think that has any impact on how the
02:24:31 8 officer is going to respond.

02:24:32 9 Q If an officer does know that the person's
02:24:35 10 either .26 or, you know, under the influence of
02:24:41 11 marijuana or alcohol, hard liquor, should the
02:24:47 12 officer, if he had known that, perceived what
02:24:51 13 we watched on the video as perhaps more
02:24:53 14 ambiguous than what Officer Mensah stated?

02:24:57 15 A I don't know that there is any way you could
02:25:00 16 know that.

02:25:07 17 MR. KNIGHT: Assuming a longer
02:25:09 18 observation period in which it became apparent
02:25:12 19 to you, if you are close enough --

02:25:14 20 MS. JACOBS: For example, the odor of
02:25:17 21 marijuana emanating from the car, would that
02:25:21 22 have -- should that have played into his
02:25:25 23 calculus as to what was going on?

02:25:27 24 THE WITNESS: I don't think Mensah
02:25:29 25 was close enough to smell the marijuana. It

02:25:32 1 wasn't until the other guys approached and got
02:25:34 2 Anderson out, they said the car had a heavy
02:25:37 3 odor of marijuana in it. I don't think Mensah
02:25:42 4 noticed that. He didn't notice any marijuana.

02:25:45 5 BY MR. BISKUPIC:

02:25:45 6 Q I think that's right. But I guess to
02:25:48 7 Mr. Knight's point is, it could well be that
02:25:53 8 Mr. Anderson was actually falling asleep and
02:25:56 9 couldn't keep his hands up because of that, and
02:26:00 10 at some point, if an officer does know those
02:26:03 11 factors, certainly, that would be applicable;
02:26:07 12 I'm not saying it's determinative, but
02:26:09 13 applicable to the analysis under 13-01; would
02:26:16 14 you agree?

02:26:16 15 A Possible.

02:26:19 16 Q Another part of the complaint is that Officer
02:26:24 17 Mensah fired six times. The complainant
02:26:27 18 contends that in all these shootings, the three
02:26:30 19 shootings, that he fired more than was
02:26:33 20 necessary. I want to ask you about the total
02:26:37 21 number of firearms. First of all, our
02:26:40 22 understanding is that Officer Mensah's firearm
02:26:47 23 is issued by the department; you keep one
02:26:51 24 bullet in the chamber and that you have 15 in
02:26:56 25 the attached magazine?

02:26:57 1 A Yes.

02:26:57 2 Q So he had 16 total shots available in the
02:27:02 3 Anderson shooting. I guess, by my calculation,
02:27:04 4 the 6 shots take approximately two seconds, and
02:27:09 5 he only fired 6 of the 16. Can you give us
02:27:12 6 some guidance on what officers are told as to
02:27:15 7 how much they should keep shooting and when
02:27:18 8 they should stop shooting?

02:27:21 9 A Officers are taught to shoot until they stop
02:27:23 10 the threat.

02:27:26 11 Q And should he have known the threat was stopped
02:27:28 12 after one shot as opposed to six, or six as
02:27:32 13 opposed to he could have shot all 16, I guess,
02:27:35 14 is one of the issues?

02:27:36 15 A He fired six shots in two seconds. I mean, it
02:27:39 16 goes really fast, so I think after he fired
02:27:42 17 those first six shots, then he realized the
02:27:45 18 threat -- at least that at that point, nothing
02:27:47 19 else was happening, so he didn't fire any more.

02:27:49 20 Q Do you apply a similar analysis to -- I know we
02:27:53 21 are not going to tell with the other two
02:27:54 22 shootings in depth, but they are basically part
02:27:57 23 of the scope of what we are looking at here,
02:28:00 24 and the complaint alleges that I believe 19
02:28:03 25 shots fired total in the three incidents, but,

02:28:06 1 again, at least as we have analyzed the
02:28:08 2 situation, in none of the three incidents does
02:28:11 3 he unload his entire magazine?

02:28:14 4 A No. I don't have any problems with the way he
02:28:17 5 did it. He was responding to his training,
02:28:21 6 and, again, when he saw that there wasn't a
02:28:23 7 threat anymore, he stopped firing.

02:28:24 8 Q What about in the first shooting where he fires
02:28:26 9 multiple times, and Officer Newman only fires
02:28:29 10 once?

02:28:31 11 A Officer Newman was probably -- Officer Newman,
02:28:41 12 just so you know, he is deceased now. He was a
02:28:46 13 police officer that was -- I don't mean this to
02:28:52 14 sound disparaging to him, but he was less than
02:28:55 15 stellar as a performer. He barely made it
02:28:58 16 through the training program just because he
02:29:00 17 wasn't that bright, but he made it through, and
02:29:05 18 I think he was just very -- not aggressive. I
02:29:10 19 don't think he did a lot of self-initiated
02:29:13 20 work, and it wasn't until Gonzales had backed
02:29:16 21 those guys both up that -- I think he probably
02:29:19 22 thought, well, if Mensah is firing, then I
02:29:22 23 should fire one too. I can't say for sure, but
02:29:25 24 that's how I would think that happened.

02:29:29 25 MR. BISKUPIC: I'm going to return to

02:29:31 1 the totality of the three shootings a little
02:29:34 2 later, but on this particular shooting, does
02:29:36 3 anyone have any more questions on the
02:29:41 4 justification?

02:29:41 5 MR. MUELLER: Chief, regarding the
02:29:43 6 dialogue between Officer Mensah and Anderson,
02:29:49 7 from a future training perspective, had you --
02:29:53 8 did you have an opinion about other things he
02:29:56 9 might have said or done during that short
02:29:58 10 encounter? Some of the things that I've heard,
02:30:07 11 instead of making the guy hold his hands up,
02:30:10 12 telling the guy to put his hands on the wheel
02:30:12 13 or something else to deescalate the situation.

02:30:16 14 THE WITNESS: That's possible. This
02:30:20 15 happened so quickly, you know. Or maybe -- you
02:30:28 16 know, I'm sure that if Mensah thought this was
02:30:31 17 going to turn into a confrontation, he might
02:30:34 18 have said, let me just back off here until I
02:30:36 19 get backup here. If he would have known the
02:30:38 20 gun was there prior to him walking up, he might
02:30:40 21 have said, "Hey, I think this guy's got a gun.
02:30:43 22 Let's just stand by here for a second." Be
02:30:45 23 that as it may, he got up there and saw the
02:30:48 24 gun. By then it was already -- he had already
02:30:50 25 engaged him. So you can look at every one of

02:30:55 1 these as a learning experience that it could
02:30:57 2 be -- that's how we use the debriefing and
02:31:00 3 training issues that come up, we say, could we
02:31:03 4 have handled things differently? Maybe in the
02:31:06 5 future we could, but at that time, here's the
02:31:08 6 way it unfolded.

02:31:10 7 MR. MUELLER: I don't second-guess
02:31:11 8 the man.

02:31:15 9 THE WITNESS: Can I just say one
02:31:17 10 other thing?

02:31:17 11 MR. BISKUPIC: Sure.

02:31:17 12 THE WITNESS: So the comment on that,
02:31:19 13 I have the luxury of second-guessing these guys
02:31:21 14 all the time because I watch these videos
02:31:25 15 backwards and forwards, frame by frame, slow
02:31:27 16 motion. I take as much time as I want. He has
02:31:31 17 two seconds to make up his mind, you know, so I
02:31:34 18 always look at those things, you know, were
02:31:37 19 they acting in good faith? Was the cop trying
02:31:40 20 to do the right thing? If the answer is yes,
02:31:42 21 then I kind of take that into account. And I
02:31:44 22 always say, in my own mind, I may have handled
02:31:47 23 something different, but I wasn't there, so,
02:31:50 24 with what he had been faced with and what he
02:31:52 25 was dealing with, did he try to do it the right

02:31:54 1 way? If the answer is yes, then I look at it
02:31:58 2 from that standpoint too.

02:32:00 3 MR. MUELLER: Okay.

02:32:02 4 MR. NEUREUTHER: Chief, we were
02:32:03 5 talking before a little bit about rendering
02:32:06 6 aid, and I know that the question here is
02:32:09 7 should Officer Mensah have rendered aid. My
02:32:12 8 question to you would be, if an officer's
02:32:15 9 alone; he does a shoot, would it be prudent for
02:32:20 10 him to go to that car whether he's not sure if
02:32:26 11 he's alive or if he's incapacitated, the
02:32:31 12 question is, would it be prudent for him to go
02:32:34 13 alone or wait until two other officers come?

02:32:37 14 THE WITNESS: I would think waiting
02:32:39 15 is the prudent thing to do because you don't
02:32:41 16 know if maybe -- maybe the other -- the guy in
02:32:44 17 the car, maybe his buddy was out of the car
02:32:47 18 doing something else outside. He doesn't know
02:32:49 19 if there was another assailant, potentially,
02:32:52 20 and after he had just been involved in this
02:32:55 21 confrontation, I'm sure he was shaking,
02:32:58 22 thinking what do I have to do next? Let me
02:33:01 23 just get my backups here. So I think what he
02:33:03 24 did was okay.

02:33:04 25 BY MR. BISKUPIC:

02:33:04 1 Q A couple other follow-up questions on the
02:33:06 2 shooting. First of all, your department tells
02:33:08 3 me that you can confirm that he received the
02:33:12 4 appropriate -- or you received confirmation
02:33:14 5 that he received, that is Officer Mensah
02:33:17 6 received appropriate psychological training
02:33:20 7 that's required for a post-shooting incident?

02:33:22 8 A I don't know about training, but evaluation.

02:33:25 9 Q Okay.

02:33:26 10 A I send somebody for counseling afterwards.

02:33:29 11 Q Okay. And I'm sorry. I did misspeak, what I
02:33:32 12 meant was that the mandatory counseling did
02:33:34 13 take place?

02:33:35 14 A Yes.

02:33:35 15 Q The next up, for this particular shooting, you
02:33:39 16 have -- you now have something called a
02:33:41 17 critical incident report, right, the form that
02:33:45 18 officers fill out; you are familiar with that
02:33:47 19 form?

02:33:48 20 A Yeah.

02:33:49 21 Q Okay. I'm not sure if there was such a form in
02:33:52 22 2016. The use of force policy that says that
02:33:55 23 there will be some kind of supervisory
02:33:57 24 statement given and the officer will be
02:34:00 25 interviewed. One of the complaint issues is

02:34:03 1 that the form was not filled out in the
02:34:06 2 Anderson shooting. I believe I talked to
02:34:16 3 Lieutenant Vetter -- I'm sorry, Captain Vetter
02:34:16 4 and Lieutenant Roy, and they believe that the
02:34:18 5 form was not in existence at that time; do you
02:34:21 6 know offhand?

02:34:22 7 A I don't believe it was either.

02:34:24 8 Q Okay. Is there anything about the lack of that
02:34:29 9 form -- let me just ask this: Obviously, there
02:34:31 10 was a detailed investigation conducted, and
02:34:36 11 your department did its own administrative
02:34:39 12 review. It seems to me that the information
02:34:40 13 that would be on the form was relayed, and you
02:34:44 14 now -- do you know why a specific form was not
02:34:48 15 utilized other than it didn't exist in 2016?

02:34:52 16 A I think -- unfortunately, we have had many more
02:34:57 17 incidents since 2016 because we are part of an
02:35:00 18 area-wide investigative team because
02:35:03 19 departments can't investigate their own, so we
02:35:06 20 are part of a -- we call it the MAIT team. It
02:35:12 21 stands for Milwaukee Area Investigative Teams,
02:35:14 22 so if Milwaukee is involved in a shooting, they
02:35:17 23 can't handle their own, so we will do it. So
02:35:19 24 part of the group is Wauwatosa, West Allis,
02:35:23 25 Greenfield, Oak Creek, and Waukesha, and then

02:35:28 1 Milwaukee, so we are always on a rotation, and
02:35:30 2 it's like, okay, we are free this month. Like
02:35:33 3 the month of September, I think Greenfield is
02:35:34 4 up, and then West Allis is after that, so
02:35:38 5 hopefully for the month of September, we don't
02:35:40 6 have to get involved in any of the things, but
02:35:42 7 we all rotate them around, and, unfortunately,
02:35:45 8 there has been enough in the area that we have
02:35:47 9 all gotten really good at it, and so I think
02:35:49 10 that critical incident review report is
02:35:54 11 probably something we now have to utilize.

02:35:59 12 MR. NEUREUTHER: Is that authorized
02:36:01 13 by all the departments involved?

02:36:02 14 THE WITNESS: I think so.

02:36:03 15 MS. JACOBS: Other than the Cole and
02:36:06 16 Anderson shootings, are you aware if Officer
02:36:11 17 Mensah has been involved in other incidents,
02:36:16 18 traffic stops, confrontations, you know, run
02:36:19 19 the gamut, whereby he had to disarm a person or
02:36:24 20 where there were weapons involved in those?

02:36:27 21 THE WITNESS: Not offhand, not
02:36:28 22 without checking back, you know, with any
02:36:30 23 particular things that stand out in the file.
02:36:34 24 I've gotten a bunch of commendation letters
02:36:37 25 from people about him or complimentary letters

02:36:39 1 too because he talks well to people. He's a
02:36:41 2 pretty articulate guy.

02:36:44 3 MS. JACOBS: But in terms of dealing
02:36:46 4 with suspects or just, you know, someone in the
02:36:49 5 community who has a firearm.

02:36:51 6 THE WITNESS: Offhand, I don't know

02:36:54 7 MS. JACOBS: You can't recall any?

02:36:56 8 THE WITNESS: No, not without having
02:36:57 9 it in front of me and seeing, but -- I'm not
02:36:59 10 saying that they don't exist; I'm just not
02:37:01 11 aware of any.

02:37:02 12 MS. JACOBS: Okay.

02:37:11 13 MR. BISKUPIC: By the way, just for
02:37:12 14 the record, it's Policy 17-11 which requires an
02:37:15 15 officer to have psychological counseling after
02:37:20 16 a shoot. And I'm going to come back to Policy
02:37:23 17 17-11 in a minute. Let's take a break.

02:37:33 18 (Recess taken.)

19 BY MR. BISKUPIC:

02:48:44 20 Q I would like to move on to the next area that I
02:48:51 21 want to deal with, and that is I want to return
02:48:53 22 to the radio interview and talk about some of
02:48:56 23 the statements that Officer Mensah made during
02:48:59 24 the radio interview.

02:49:02 25 Chief, have you reviewed the substance

02:49:04 1 of what Officer Mensah stated during his July
02:49:07 2 28, 2020, radio interview?

02:49:10 3 A No. I listened to the radio interview. I
02:49:13 4 never saw the transcript of anything what he
02:49:15 5 said.

02:49:15 6 Q Okay. I want to start by focusing on comments
02:49:20 7 he had about the police and fire commission.
02:49:23 8 First of all, in the rules in front of you,
02:49:25 9 Rule 31 states that officers shall obey all
02:49:30 10 lawful orders; that's 31. 33 states that a
02:49:34 11 police officer shall not act in a manner that
02:49:36 12 exhibits disrespect for supervisor. And Rule
02:49:40 13 83 states that an officer who feels aggrieved
02:49:42 14 by an order of a supervisor "shall communicate
02:49:45 15 same in writing through the appropriate chain
02:49:48 16 of command." The fire and police commission
02:49:53 17 directed you to suspend Officer Mensah with pay
02:49:56 18 during the pendency of the claim against him
02:49:58 19 that happened on July 15, 2020. First of all,
02:50:02 20 would you agree that the police and fire
02:50:04 21 commission is the lawful superior for all
02:50:07 22 police officers including yourself?

02:50:10 23 A No.

02:50:11 24 Q Why?

02:50:12 25 A The police and fire commission is responsible

02:50:15 1 for hiring and firing police officers,
02:50:20 2 promotions and things like that, but superiors
02:50:24 3 actually report to the mayor and the city
02:50:27 4 administrator.

02:50:33 5 Q I want to read you a couple of quotes that
02:50:36 6 Officer Mensah had during the radio interview
02:50:37 7 about the police and fire commission. The
02:50:39 8 first one is, "Not to throw race out there, but
02:50:44 9 it is just kind of weird that out of all these
02:50:46 10 critical incidents that we have, here's a black
02:50:49 11 police officer. I'm the only one who has got
02:50:53 12 suspended for a critical incident involving a
02:50:56 13 suspect that's armed. It's confusing, and I
02:51:00 14 don't understand why." He then says, "Why does
02:51:06 15 the fire and police commission have an issue
02:51:08 16 with it now? The incident was in 2016, they
02:51:12 17 have an issue with it now. They knew all this
02:51:14 18 after 2016 and didn't have an issue with it in
02:51:17 19 2017, didn't have a issue with it in 2018,
02:51:21 20 didn't have a issue with it in 2019; now, in
02:51:24 21 2020, I'm suspended for no reason, but just
02:51:27 22 suspended." First of all, I haven't found any
02:51:32 23 evidence that the suspension of Officer Mensah
02:51:34 24 was racially motivated by the police and fire
02:51:37 25 commission. Do you have any information that

02:51:39 1 would indicate that they were motivated by race-

02:51:40 2 in terms of directing you to suspend him?

02:51:43 3 A No.

02:51:43 4 Q Second, if Officer Mensah had made these

02:51:48 5 comments about you, would you have considered

02:51:51 6 them insubordination?

02:51:57 7 A He wouldn't have made the comments about me

02:51:58 8 because I would have told him exactly what's

02:52:00 9 going on.

02:52:01 10 Q And do you believe his statements were based on

02:52:03 11 him not knowing exactly what was going on?

02:52:06 12 A Well, you know, he's right when he says that

02:52:12 13 there was no complaints made against him in

02:52:14 14 '16, '17, '18, or '19 on this very incident.

02:52:18 15 It wasn't until Kimberley Motley decided to

02:52:21 16 bring this forward that all of a sudden, we

02:52:24 17 have this investigation.

02:52:27 18 Q I want to focus, though, on his comments which

02:52:30 19 I perceive as disparaging the police and fire

02:52:33 20 commission. Do you believe that they run afoul

02:52:36 21 of the intent of Rules 31, 33, and 83?

02:52:40 22 A His comments?

02:52:47 23 Q Yes.

02:52:51 24 A Of 31, insubordination, no, because if he was

02:52:55 25 insubordinate, he would be insubordinate to

02:52:56 1 somebody in our department, not the police and
02:52:58 2 fire commission. 33, disrespect for his
02:53:01 3 supervisor. They are not his supervisor. And
02:53:04 4 83 is -- was it 83?
02:53:08 5 Q Yeah.
02:53:09 6 A Communication with the chief of police.
02:53:13 7 Q Yeah, I read 83 to say, if you've got a problem
02:53:16 8 with an order, you are supposed to direct it to
02:53:19 9 you.
02:53:21 10 A It says orders of supervisor, so, again, I
02:53:34 11 don't think the police and fire commission is
02:53:36 12 his supervisor, so I don't think that rule
02:53:38 13 would apply.
02:53:39 14 Q Do you find it that his comments were otherwise
02:53:43 15 appropriate for a Wauwatosa police officer?
02:53:48 16 Did it disparage the police and fire
02:53:50 17 commission?
02:53:50 18 A When you say disparage, do you mean the
02:53:53 19 comments that you already read off?
02:53:55 20 Q Correct, that they suspended him for no reason,
02:53:59 21 and they may have done so because he's the only
02:54:02 22 black officer to get suspended for a critical
02:54:04 23 incident?
02:54:04 24 A You know, he is a black police officer, and so
02:54:08 25 he's going to be able to have his perceptions

02:54:10 1 and say what's on his mind as far as that goes,
02:54:13 2 whether or not that's true, but that's what he
02:54:17 3 believes, or he just points that out because he
02:54:19 4 is the only black police officer that has
02:54:21 5 gotten suspended. I believe it's also true
02:54:26 6 they never told him the reason they were
02:54:30 7 suspending him. I think his attorneys already
02:54:35 8 appealed to the circuit court because they have
02:54:36 9 never -- they never gave him a rule or reason
02:54:41 10 that he's been suspended.

02:54:45 11 MR. BISKUPIC: Anything on that
02:54:46 12 particular issue about the police and fire
02:54:48 13 commission?

02:54:49 14 BY MR. BISKUPIC:

02:54:50 15 Q Next I want to go through some of the
02:54:54 16 statements that he made in the interview about
02:54:58 17 his operation of the squad video, and, in
02:55:04 18 particular, his statement regarding the
02:55:08 19 activation of the squad video during the
02:55:12 20 Anderson shooting. "The family claims I
02:55:15 21 violated a policy by not turning on my body
02:55:18 22 cam. I'm not going to get into it, but that's
02:55:22 23 not a policy violation. There is reasons and
02:55:25 24 circumstances when that gets turned on. It's
02:55:30 25 turned on because I turn it on. You can't

02:55:33 1 accidentally bump the camera. You can't
02:55:35 2 accidentally push the button in a leather case.
02:55:38 3 You have to physically turn the button on. I
02:55:40 4 turned it on. I turned it on because I knew
02:55:42 5 people would want to believe me, but I
02:55:45 6 wanted -- I needed them to believe me, but I
02:55:48 7 wanted them -- I needed them to -- I needed to
02:55:51 8 have the evidence to support what I saw, so I
02:55:54 9 turned that on fully knowing that once I hit
02:55:57 10 the button, it would go back in time. It would
02:56:00 11 go back, you know, 20, 30 seconds, and it would
02:56:02 12 capture that. I did that."

02:56:06 13 I want to compare what he said there to
02:56:08 14 what he said -- and I brought it up previously,
02:56:13 15 when he said to a fellow officer arriving on
02:56:16 16 the scene immediately after the shooting, "I
02:56:18 17 tried to hit the button a couple of times. I
02:56:21 18 tried to hit record, kept rehitteing record over
02:56:24 19 and over, but it didn't -- it wouldn't turn
02:56:27 20 on." So the first question I have for you, it
02:56:30 21 just seems to be inconsistent for him to state
02:56:34 22 that he turned it on because he knew he had to
02:56:36 23 turn it on, and then another instance he said
02:56:38 24 he tried to turn it on but it wasn't working
02:56:40 25 properly. Have you done any comparison of what

02:56:42 1 he said on these particular statements?

02:56:44 2 A No, because when he said he tried to turn it on
02:56:47 3 but it wouldn't turn on, again, he may have
02:56:49 4 been hitting at that button, and it probably
02:56:51 5 turned on, and he didn't realize it was turned
02:56:54 6 on, so when he was talking to the radio
02:56:57 7 station, he said -- what he said was that he
02:56:59 8 turned it on because he decided to turn it on,
02:57:02 9 so that was not really inconsistent because
02:57:02 10 he's the one that decided to turn it on.

02:57:05 11 Q What about when he told Detective O'Day from
02:57:08 12 the Milwaukee Police Department during his
02:57:10 13 immediate -- excuse me, during the interview
02:57:12 14 approximately a day later after the shooting,
02:57:16 15 Officer O'Day recounted, quote, "PO Mensah
02:57:18 16 stated immediately after discharging his
02:57:20 17 weapon, he pressed the button on his squad mic
02:57:23 18 that activated the camera. He explained the
02:57:25 19 video goes back 20 seconds without audio."
02:57:28 20 Should he have told Detective O'Day that he
02:57:30 21 tried to hit the button a couple times and it
02:57:32 22 didn't work?

02:57:33 23 A I don't know. I don't know. He said he turned
02:57:39 24 the -- he pushed the button. He tried to turn
02:57:41 25 it on. He said the same thing, you know -- I

02:57:45 1 think he was pretty consistent that he
02:57:46 2 physically tried to turn that thing on and then
02:57:48 3 ultimately it did turn on.

02:57:52 4 Q Did he know that it had turned on?

02:57:56 5 A At the time, he might not have known that
02:57:59 6 because he said he was -- he had to physically
02:58:00 7 do it, and he was having trouble with it, so
02:58:03 8 when he was hitting at the button a couple of
02:58:06 9 times, it probably went on, and he didn't
02:58:09 10 realize it, because when you hit it a couple of
02:58:13 11 times -- I think once it's on, it's on.

02:58:13 12 Q You didn't construe that trying to turn it on
02:58:16 13 to be him explaining what happened when he
02:58:17 14 first arrived on the scene?

02:58:23 15 A No, because he didn't turn it on until after
02:58:25 16 the shooting.

02:58:26 17 Q No, but to us it seems like he is stating that
02:58:29 18 he tried to turn it on before the shooting and
02:58:32 19 it didn't work. He says, quote, "I tried to
02:58:35 20 hit the button a couple of times. I tried to
02:58:37 21 hit record, kept hitting record over and over,
02:58:40 22 but it wouldn't turn on."

02:58:41 23 A I looked at --

02:58:44 24 MR. KNIGHT: What's the sequence?
02:58:52 25 Referring to the recording preshooting?

02:58:54 1 MR. BISKUPIC: The context is he's
02:58:55 2 asked about whether he recorded the incident.

02:59:01 3 THE WITNESS: I don't believe he went
02:59:02 4 to turn on the camera -- or the recording
02:59:05 5 device until after he fired the shots.

6 BY MR. BISKUPIC:

02:59:15 7 Q We went back and we interviewed Detective
02:59:18 8 O'Day, or these gentlemen did, a couple of them
02:59:20 9 did, and Detective O'Day stated pretty clearly
02:59:22 10 to us that he never -- Officer Mensah never
02:59:26 11 related to him unsuccessful attempts to engage
02:59:29 12 the video camera. We are just trying to
02:59:31 13 square, did he try to do it and it didn't work,
02:59:34 14 did he try to do it and it really did work, or
02:59:36 15 did he try it once and it didn't work, and he
02:59:39 16 tried it later and it didn't work?

17 A I didn't ask him.

02:59:58 18 Q Okay. Next in the interview, also speaking
03:00:02 19 specifically about the Anderson shooting, he
03:00:08 20 states, "I'm an anomaly in this whole
03:00:13 21 situation, even though they continue, continue
03:00:15 22 to disregard the fact that the common
03:00:16 23 denominator in every single one of these
03:00:19 24 incidents is that the suspect was armed, either
03:00:23 25 they displayed a weapon, went for a weapon,

03:00:26 1 fired that weapon, in every single one of them,
03:00:30 2 and out of all of these -- the entire -- their
03:00:34 3 defense in all these incidents is that I am the
03:00:37 4 problem in every single one of them. It
03:00:40 5 completely takes out the fact that you have
03:00:41 6 people who are committing crimes, where I'm
03:00:44 7 going to calls where people have committed
03:00:46 8 crimes." I want to focus particularly on that
03:00:51 9 last sentence where he says it completely takes
03:00:53 10 out the fact that you have people who are
03:00:54 11 committing crimes, where I'm going to calls
03:00:56 12 where people who have committed crimes -- where
03:00:59 13 people have committed crimes, correction.
03:01:03 14 Obviously, being in a park after dark is not a
03:01:07 15 crime; it's a forfeiture of between 20 and
03:01:12 16 \$200, and also by his own statement, he wasn't
03:01:15 17 responding to a call. He went there on normal
03:01:18 18 patrol. It may not be the most major of
03:01:22 19 differences, but he certainly was suggesting
03:01:25 20 publicly that Mr. Anderson was engaged in a
03:01:28 21 crime that prompted Officer Mensah to the
03:01:30 22 scene. I just wanted to address -- give you an
03:01:34 23 opportunity to address another statement of
03:01:36 24 that interview that troubles us because he is
03:01:38 25 stating that he was responding to a call about

03:01:40 1 a crime and that was not the case with

03:01:43 2 Mr. Anderson?

03:01:46 3 A Okay. So what's the question?

03:01:48 4 Q Is he not being forthright?

03:01:54 5 A No, I don't think so.

03:01:56 6 Q Why?

03:01:56 7 A You can say that Anderson was in the park after
03:02:03 8 it had closed or whatever. An ordinance
03:02:06 9 violation? Sure. But then when he goes there
03:02:08 10 and he does some investigation, he sees
03:02:10 11 Anderson was a gun. In the Gonzales case, we
03:02:14 12 were there, and when we were called to that
03:02:16 13 scene, Gonzales was threatening his partner
03:02:20 14 with a -- trying to cut him with arrowheads.
03:02:23 15 At the mall, Alvin Cole had threatened another
03:02:28 16 customer at the mall with a gun, with a stolen
03:02:31 17 gun, so, I mean, you can split the hairs if you
03:02:35 18 want, but in each case, he faced three armed
03:02:38 19 people.

03:02:41 20 Q I want to show you a memorandum that was
03:02:45 21 forwarded to us by your department. It's
03:02:51 22 represented as the summary of critical
03:02:54 23 incidents that we requested be provided and
03:02:59 24 it's addressed to you, but it was forwarded to
03:03:03 25 us, from January of 2010 to August 24th of

03:03:08 1 2020. First of all, can you give me your
03:03:12 2 definition of what a critical incident is?

03:03:17 3 A A critical incident is something -- here when
03:03:21 4 we have -- something that would arise to a
03:03:24 5 serious felony or deadly force or somebody
03:03:26 6 getting seriously hurt or the potential for
03:03:30 7 somebody to get seriously hurt or injured, that
03:03:32 8 would be critical.

03:03:33 9 Q On these particular incidents, the first one
03:03:38 10 from June of 2015, "suspect fled, fired shots
03:03:44 11 at the officer, not fatally -- nonfatally
03:03:46 12 striking one of the detectives. Officers
03:03:48 13 returned fire but did not hit the suspects."
03:03:52 14 Can you take a look -- maybe you want to look
03:03:54 15 through. This is only two pages, but I'm
03:03:56 16 curious as to whether or not the officers that
03:03:58 17 returned fire but did not hit the suspect had
03:04:01 18 been involved in any of the other incidents
03:04:04 19 that are listed on these two pages. Do you
03:04:07 20 want to take a second to go through?

03:04:08 21 A Sure. (Captain Weber reviewing document.)
03:04:40 22 Okay.

03:04:40 23 Q Can you recall whether any of the officers who
03:04:42 24 were involved in the June 2015 incident were
03:04:44 25 also involved in any of the other shootings?

03:04:47 1 A I don't believe they were. The June 15th -- or
03:04:49 2 June 19th one in 2015 was a day shift incident,
03:04:52 3 and those are day shift officers that were
03:04:56 4 involved, but the other ones were evening.

03:04:58 5 Q And if we go to the January 11, 2016, we have
03:05:06 6 two police officers who arrived on the scene,
03:05:10 7 shot the suspect, the suspect survived his
03:05:12 8 injuries. Were those two officers involved in
03:05:14 9 any of the other shootings on this list?

03:05:17 10 A I don't think so. One officer I know, and the
03:05:23 11 other one I'm trying to catch the name who was
03:05:25 12 involved in it, but I don't think they were.

03:05:27 13 Q And then finally the January 9, 2018, incident
03:05:31 14 where it says, "Two officers returned fire
03:05:33 15 striking the suspect in the lower body."
03:05:37 16 Again, do you recall whether those officers had
03:05:38 17 ever been involved in a prior shooting that's
03:05:41 18 on this list?

03:05:46 19 A Yes.

03:05:47 20 Q Both officers? One?

03:05:49 21 A One of the officers in the January 9, 2018, is
03:05:54 22 no longer with the department, and the other
03:05:57 23 officer, he was involved in the Alvin Cole case
03:06:02 24 on February 2nd of 2020 this year. He did not
03:06:05 25 fire his weapon, but he was there.

03:06:07 1 Q Okay. But he was not involved in the June 2015
03:06:10 2 or January 2016 incident, to your knowledge?

03:06:18 3 A Not in the 2015. 2016, I don't think so.

03:06:21 4 Q Again, returning to the radio interview, one of
5 the things that Officer Mensah stated in the
03:06:31 6 interview, particularly about these "critical
03:06:33 7 incidents," he states as follows: "It's crazy
03:06:36 8 because if you were to look at my department
03:06:38 9 and other departments as well, there are
03:06:40 10 several officers that have fired way more. I'm
03:06:44 11 not trying to deflect onto them, but the issue
03:06:47 12 is even with my own department. We have over a
03:06:50 13 half dozen officers within these past five
03:06:53 14 years that have gotten in several critical
03:06:56 15 incidents of shootings." Chief, as far as we
03:07:02 16 can tell, there weren't more than a half dozen
03:07:05 17 officers who in the last five years have fired
03:07:07 18 their weapons or been involved in "several
03:07:09 19 separate incidents in which weapons were
03:07:12 20 fired"; does that sound correct to you also?

03:07:16 21 A I'm not sure. Could you read that part again
03:07:21 22 what he said?

03:07:22 23 Q Sure. He says "We have over a half dozen
03:07:25 24 officers within the past five years that have
03:07:29 25 gotten in 'several critical incidents of

03:07:32 1 shootings,'" so as I read his statement, he's,
03:07:36 2 No. 1, defining beyond himself over a half
03:07:40 3 dozen officers, seven or more, within the past
03:07:43 4 five years, who have gotten in several critical
03:07:46 5 incidents of shootings. And based on your
03:07:49 6 list, I'm just not seeing it.

03:07:51 7 A He's probably correct with the half dozen
03:07:54 8 officers, but they are not in multiple
03:07:57 9 incidents, if that's the way you are seeing it.
03:08:02 10 At one point I had almost ten percent of the
03:08:04 11 department that had been involved in a shooting
03:08:06 12 until a few guys retired, so in the last few
03:08:10 13 years we have been involved in a number of
03:08:11 14 shootings. The ones that you cite on 2015, the
03:08:14 15 January -- the June of 2015, I think at least
03:08:21 16 two officers fired their weapons in that one,
03:08:24 17 and in the Gonzales incident, in addition to
03:08:27 18 Mensah, another officer fired. The January 16,
03:08:32 19 2016, one, there was two officers that fired
03:08:35 20 weapons; that's five. And then the January of
03:08:42 21 2018, two officers fired their weapons, so
03:08:47 22 that's seven.

03:08:47 23 Q Sure, but the question is, are there officers
03:08:52 24 who have fired their weapons in these
03:08:54 25 incidents, an individual officer who has been

03:08:57 1 involved in more than one shooting besides
03:09:00 2 Officer Mensah?

03:09:01 3 A Other than the one I just stated where the guy
03:09:05 4 didn't fire his weapon in the Alvin Cole case,
03:09:09 5 but that's the only ones I'm aware of.

03:09:09 6 Q Right. And you certainly would be aware if you
03:09:11 7 had an officer that had been involved in more
03:09:14 8 than one shooting like Officer Mensah, correct?

03:09:16 9 A Yes.

03:09:16 10 Q I assume, if necessary -- and I don't think it
03:09:18 11 is right now -- you could supply the names of
03:09:22 12 the officers from this list?

03:09:22 13 A Yes.

03:09:29 14 MR. BISKUPIC: Any questions on that
03:09:30 15 issue?

03:09:34 16 MR. MUELLER: Can I drop back a
03:09:36 17 little bit?

03:09:36 18 MR. BISKUPIC: Sure.

03:09:37 19 MR. MUELLER: When an officer hits
03:09:38 20 the button, is there some clear indication that
03:09:43 21 the camera's on? I know it vibrates, but guys
03:09:48 22 wear it in the leather pouch or they put it
03:09:51 23 inside their shirt above their vest and so on
03:09:54 24 so that vibration may or may not work. Is
03:09:56 25 there any other way that an officer knows that

03:09:58 1 the camera's on?

03:09:59 2 THE WITNESS: I don't know the answer
03:10:00 3 to that. I've never worn one.

03:10:02 4 MR. MUELLER: Okay.

03:10:08 5 BY MR. BISKUPIC:

03:10:08 6 Q I want to stay with the radio interview, and I
03:10:11 7 next want to direct you to Policy No. 17-11.
03:10:23 8 In particular, I want to direct you to page 4
03:10:32 9 sub B, "Release of Information." So going back
03:10:53 10 to the radio interview, during the radio
03:10:55 11 interview, part of those quotes I read you
03:10:58 12 before, he starts discussing "every single one
03:11:01 13 of these incidents the subject was armed,
03:11:04 14 either they displayed a weapon, went for a
03:11:06 15 weapon, fired that weapon in every single one
03:11:08 16 of them." He also states, "It completely takes
03:11:11 17 out the fact that you have people who are
03:11:14 18 committing crimes, where I'm going to calls
03:11:18 19 where people have committed crimes; they
03:11:19 20 present a weapon at an officer." Clearly, the
03:11:22 21 Alvin Cole case is encompassed in the radio
03:11:25 22 interview. In fact, Mr. Cole is mentioned as
03:11:29 23 somebody had who fired a gun at the officer,
03:11:32 24 though that's from the interviewer, and
03:11:37 25 obviously not accurate, but putting that one

03:11:40 1 aside, you have an officer who is commenting on
03:11:46 2 an investigation that is under review by the
03:11:48 3 district attorney's office. In a normal
03:11:50 4 setting this would be a violation of 17-11,
03:11:54 5 correct?

03:11:57 6 A In a normal setting, probably.

03:12:00 7 Q Why is this not a normal setting?

03:12:03 8 A Because when he made the reference on the
03:12:07 9 radio, first off, he was already under
03:12:09 10 administrative suspension, so once he is put
03:12:15 11 under administrative suspension, I don't think
03:12:17 12 I have as much control over him because we take
03:12:20 13 his badge and gun away, tell him he can't come
03:12:23 14 into the police department without permission.
03:12:26 15 So he wasn't reporting to me, and the comments
03:12:30 16 he made about the Alvin Cole case where nothing
03:12:33 17 -- it wasn't released by me on February 6th
03:12:35 18 when I did my first press release, I said that
03:12:38 19 Alvin Cole had fired a weapon at our police
03:12:43 20 officers with a stolen weapon.

03:12:44 21 Q Well, as I understand Policy 17-11,
03:12:48 22 particularly the release of the information and
03:12:49 23 the district attorney's office review is that
03:12:51 24 it's important that the district attorney have
03:12:53 25 all statements of the people involved. If

03:12:56 1 given a radio interview, the district attorney
03:12:59 2 may or may not be aware of that, but it's
03:13:01 3 certainly not an official statement of the
03:13:03 4 department or Officer Mensah, and the mere fact
03:13:07 5 that he's on suspension, does he get to violate
03:13:09 6 other policies that would be in effect?

03:13:15 7 A You know, I don't think he gave any information
03:13:17 8 out that wasn't already out there, so he gave
03:13:21 9 his opinion and, you know, we can get into the
03:13:23 10 First Amendment rights, and I don't usually
03:13:26 11 fight those battles for the guys; their
03:13:29 12 attorneys can do that, but I don't think he
03:13:31 13 gave any information out that wasn't already
03:13:33 14 out there.

03:13:33 15 Q Have you had to enforce Policy 17-11 in a
03:13:42 16 disciplinary proceeding that you can recall?

03:13:51 17 A Involving fatalities? I don't think so.

03:13:55 18 Q What about an officer speaking to the media
03:13:57 19 without authorization?

03:13:59 20 A I think I addressed something with a union
03:14:03 21 board member several years ago about that, but
03:14:06 22 it was just a -- I don't know if I gave him a
03:14:10 23 letter of reprimand or just a cautionary
03:14:13 24 letter, but that was about it.

03:14:18 25 MS. JACOBS: Mr. Biskupic asked

03:14:21 1 you if your -- what you are saying is that as
03:14:25 2 long as he's on administrative suspension; he's
03:14:27 3 not really under your control. Are there other
03:14:29 4 policies that he could violate, in your view,
03:14:33 5 given that he's on administrative suspension?

03:14:37 6 THE WITNESS: I would have to look at
03:14:38 7 what the policies are they violated. In this
03:14:40 8 case, I don't think that he said anything that
03:14:42 9 wasn't already previously published.

03:14:45 10 MS. JACOBS: That's not what the
11 question was.

12 THE WITNESS: No, I understand what
03:14:47 13 the question is. It depends on what the policy
03:14:49 14 is, but I don't think in this case, this was a
03:14:53 15 violation.

03:14:54 16 MS. JACOBS: Are there other policies
03:14:57 17 there, as long as an officer is on
03:14:59 18 administrative suspension, they are free to
03:15:03 19 violate?

03:15:04 20 THE WITNESS: No, they are not free
03:15:05 21 to violate policies.

03:15:07 22 MS. JACOBS: Even if they are on
03:15:07 23 administrative suspension?

03:15:10 24 THE WITNESS: Even if they are on
03:15:11 25 administrative suspension. They still have to

03:15:13 1 follow our rules.

03:15:22 2 BY MR. BISKUPIC:

03:15:22 3 Q Okay. The last area I would like to talk about
03:15:27 4 is a general area of fitness for duty and the
03:15:32 5 totality of the circumstances that the
03:15:34 6 department faces. First, I haven't -- I have
03:15:38 7 not located a single rule or policy defining
03:15:41 8 when and under what circumstances an officer is
03:15:44 9 fit for duty. Obviously, you have Rule 1,
03:15:48 10 which refers to performance of duty; Rule 5, is
03:15:52 11 failure to perform duties; Rule 9 is, in
03:15:58 12 particular, disregard for safety that I want to
03:16:00 13 make reference to in a moment. You have
03:16:05 14 obviously your use of force policies and rules.
03:16:09 15 You know, you have to obviously be able to
03:16:11 16 report for duty.

03:16:13 17 In particular, I want to address a
03:16:15 18 situation where the Wisconsin courts have
03:16:17 19 talked about an officer is, quote, "fit for
03:16:20 20 duty" when they are able to exercise all of
03:16:23 21 their required duties; that is, you know, go
03:16:28 22 out be on the street as directed, gather
03:16:30 23 evidence, you know, conduct interviews, prepare
03:16:33 24 reports, testify in court. I mean, in
03:16:37 25 particular, the case I'm referring to is

03:16:39 1 Wisconsin courts talked about when an officer
03:16:41 2 had undermined his ability to testify in court
03:16:45 3 that went to the totality of his ability to
03:16:48 4 perform his duties. Here I want to ask about,
03:16:52 5 you know, if you go back to your rules and you
03:16:55 6 look -- we talked about at the beginning, and
03:16:58 7 that I passed out to you, in particular, Rule
03:17:01 8 9, it talks about an officer shall not create a
03:17:04 9 situation of, quote, "unnecessary risk."
03:17:12 10 Officer Mensah's been involved in, as you know,
03:17:14 11 three shootings in five years. The question
03:17:17 12 is, what risk to the department will there be
03:17:21 13 if he returns to duty, and, you know, as I
03:17:25 14 understand it, if he's fit for duty and returns
03:17:27 15 to duty and if the situation arises and there
03:17:31 16 is a fourth shooting, he's, as a matter of law,
03:17:35 17 permitted to use, you know, deadly force. I'm
03:17:41 18 correct, you are not going to put an officer
03:17:43 19 back out on the street and tell him he can't
03:17:45 20 fire his gun, correct?
03:17:46 21 A Correct.
03:17:47 22 Q Is there concern to you about the Wauwatosa
03:17:50 23 Police Department putting an officer on the
03:17:51 24 street who has been involved in three prior
03:17:53 25 shootings and what would be the impact to the

03:17:55 1 department and the city if there is a fourth
03:17:58 2 shooting?

03:18:01 3 A There is a concern. I'm concerned about his
03:18:06 4 safety right now too because if he's justified
03:18:10 5 and cleared, if we put him back out on the
03:18:14 6 road, I think there is people out there now
03:18:16 7 that would try to set him up to do harm to him.
03:18:19 8 I don't think it would be safe for him on the
03:18:21 9 road, so I have those concerns.

03:18:25 10 If you take his safety out of it, you
03:18:30 11 know, any police officer in any city in this
03:18:33 12 country right now, if an officer in California
03:18:35 13 shoots somebody tonight, that could cause
03:18:37 14 problems in Wauwatosa tonight. It's just the
03:18:40 15 nature of the climate that we are in right now.
03:18:44 16 Right now because of Officer Mensah, it focuses
03:18:48 17 on Wauwatosa; that's just the way it is. So I
03:18:51 18 do have concerns about that, but I have
03:18:54 19 concerns about everybody. I've got 97 cops.
03:18:57 20 They all got guns, and sometimes I jokingly
03:19:00 21 refer to them as guys that go out there to go
03:19:04 22 get me in trouble because they all doing
03:19:06 23 things. 97 cops counting myself; 96 of them
03:19:11 24 think they would make a better chief than the
03:19:13 25 current one, and there is days that I agree

03:19:15 1 with them. So I have those concerns all the
03:19:18 2 time, and if it became Joe Mensah again, that
03:19:22 3 would probably be really -- that would bring a
03:19:24 4 lot more focus to our city, nationwide, or
03:19:27 5 whatever, but the legality is if the district
03:19:31 6 attorney clears him and says he can come back
03:19:33 7 to work, that would be up to, you know, people
03:19:40 8 at a higher level to decide if, yes, we can
03:19:44 9 make this happen, or, no, we can't.

03:19:47 10 Q Do you want to give your view on whether he
03:19:50 11 should return?

03:19:51 12 A I think for his own safety, if it was me, I
03:19:53 13 would not want to return just because, as I
03:19:55 14 said, people are going to set him up. We've
03:19:58 15 had people make threats and said they will
03:19:59 16 follow him around and make sure he does
03:20:01 17 something wrong, so I would be more concerned
03:20:03 18 for him and -- but at the same time, how do you
03:20:08 19 just say, well, you can't do this anymore?

03:20:10 20 Q What about fellow officers, do you think they
03:20:13 21 would have concern that, if they are on a call
03:20:16 22 with him, that he might be hesitant to shoot,
03:20:19 23 would be -- go the other way? If you were
03:20:25 24 responding to a scene, put yourself in the
03:20:27 25 shoes of those other 96 officers, 95 if Officer

03:20:32 1 Mensah is there, do you have concerns as the
03:20:34 2 ultimate supervisor of those officers whether
03:20:37 3 that creates too much risk for those officers?

03:20:41 4 A There might be some hesitancy from some of
03:20:45 5 them. Some would probably say it doesn't
03:20:48 6 bother them one way or the other, but others
03:20:50 7 might say, yeah, I'm concerned either way,
03:20:52 8 that, yes, he'll hesitate or might be too
03:20:55 9 quick. That would be a legitimate concern that
03:20:57 10 somebody would probably express.

03:20:59 11 Q Based on at least our interviews so far, I
03:21:04 12 mean, it seems that his fellow officers support
03:21:09 13 Officer Mensah strongly; is that your view?

03:21:11 14 A Yes.

03:21:12 15 Q So if they had subjective concerns regarding
03:21:16 16 another incident or another potential shooting,
03:21:19 17 we are not likely to get their blunt response,
03:21:22 18 are we?

03:21:22 19 A Probably not.

03:21:24 20 Q Has there ever been a situation where a
03:21:29 21 Wauwatosa police officer has fatally shot more
03:21:31 22 than one person, other than Officer Mensah that
03:21:37 23 you are aware of?

03:21:39 24 A I don't think so.

03:21:40 25 Q Is there something from an objective standpoint

03:21:45 1 -- I realize each incident is separate, but in
03:21:48 2 a jurisdiction the size of Wauwatosa, to have
03:21:51 3 one officer involved in three shootings, I
03:21:54 4 mean, just statistically, it's well off the
03:22:00 5 norm. Obviously, you can look at each
03:22:02 6 individual situation, but does the total number
03:22:04 7 of shootings concern you?

03:22:07 8 A Any shooting concerns me.

03:22:13 9 Q And if there were three by one officer, is your
03:22:16 10 concern tripled?

03:22:18 11 A Well, you have to look at each particular
03:22:20 12 situation. You know, we are not the largest
03:22:24 13 department, so officers don't get to pick and
03:22:27 14 choose what calls they respond to. But we want
03:22:30 15 them to go out and do their job. If you tell
03:22:33 16 the guy, go out there and don't do anything so
03:22:35 17 you don't get in trouble or don't get hurt,
03:22:38 18 unfortunately, nationwide we are seeing those
03:22:40 19 things in different cities because cops aren't
03:22:42 20 doing the things they used to do. They are not
03:22:43 21 stopping cars anymore. In Wauwatosa, we used
03:22:46 22 to stop a lot of cars. They are not stopping
03:22:49 23 cars anymore; why would we? Because everything
03:22:52 24 is a protest or another problem, so we have got
03:22:54 25 a real crisis in our city; so -- law

03:22:58 1 enforcement is in crisis. You know, I've been
03:23:00 2 doing it longer than most people have, and it's
03:23:03 3 a bad situation, but, you know, the problem is,
03:23:09 4 if I can expound a little bit.

03:23:10 5 Q Absolutely.

03:23:12 6 A The problem is we want our cops to go out
03:23:14 7 there, and sometimes when they enforce the law,
03:23:17 8 people will say, why don't you show the human
03:23:20 9 touch, you are just acting like robots all the
03:23:23 10 time and give me a ticket. So we ask the cops
03:23:24 11 to act like humans, and when they do that, the
03:23:27 12 human side, mistakes get made on occasion, and
03:23:30 13 people are all quick to jump on the police
03:23:32 14 officers, and say, yeah, they made a mistake.
03:23:35 15 Or how many times do you see nationwide where
03:23:36 16 the guy is reaching for a cell phone and a cop
03:23:39 17 thinks it's a gun and shoots? Those are
03:23:42 18 horrible situations, but they are going to
03:23:44 19 happen. They are going to happen. And the
03:23:47 20 George Floyd case which started everything in
03:23:50 21 our country, I think everybody who saw that was
03:23:53 22 appalled by that behavior. What bothered me
03:23:56 23 the most is that here's a guy that -- the
03:23:59 24 police officer just seemed so nonchalant about
03:24:04 25 his conduct. That's what bothered me the most.

03:24:06 1 He just seemed like this was an okay thing to
03:24:09 2 do. And every cop that I know was appalled by
03:24:11 3 that behavior, so I think that our police
03:24:16 4 officers and the cops that we have, and maybe
03:24:19 5 I'm jaded because I've hired every one of them
03:24:23 6 in our department because I've been there so
03:24:25 7 long. Every one of those people are so
03:24:27 8 compassionate and so caring about people and
03:24:31 9 very articulate in what they do and how they
03:24:34 10 approach their jobs, and they are very super
03:24:37 11 sensitive, very well educated, and, you know, I
03:24:40 12 think that if things don't change, we are going
03:24:43 13 to start losing people in this profession, and
03:24:45 14 it's going to be awfully hard to replace them.
03:24:48 15 I could get a lot more people, but do I want to
03:24:50 16 lower the standards? I don't. So it's a very
03:24:53 17 difficult time.

03:24:53 18 Q I want to follow up. I didn't mean to be
03:24:55 19 facetious when I say triple the concern, but I
03:24:59 20 do have -- I want to give you an opportunity to
03:25:01 21 address that. If in each individual
03:25:04 22 circumstance of a shooting or a nonshooting, an
03:25:06 23 officer is exercising discretion within legal
03:25:09 24 bounds and an officer within legal bounds --
03:25:12 25 you could have two officers, as we talked

03:25:14 1 before, perceiving the same situation and maybe
03:25:17 2 not slightly differently and whether it's the
03:25:19 3 district attorney's office, the U.S. attorney's
03:25:21 4 office or other reviewing entities could say,
03:25:24 5 well, the officer acted in good faith, and the
03:25:27 6 shooting was legally justified, and you take
03:25:30 7 that, and then you repeat that, two, three -- I
03:25:34 8 mean, you could keep going, I mean,
03:25:35 9 hypothetically, you could go five or ten. At
03:25:37 10 what point, and an officer is exercising
03:25:41 11 discretion, is the department entitled to take
03:25:43 12 the totality of the circumstances and say, you
03:25:47 13 know, whether it's issuing 100 jaywalking
03:25:50 14 tickets, or -- again, I don't mean to be
03:25:54 15 facetious, but on the short end, you could
03:25:56 16 judge an officer who exercises discretion by
03:26:00 17 enforcing some minor rule to the letter the
03:26:04 18 same way you can judge an officer who uses, is
03:26:08 19 there anything more serious than deadly force
03:26:11 20 on multiple occasions, and on this instance
03:26:12 21 what I'm asking you to address is, does the
03:26:14 22 fact that this particular officer may have
03:26:16 23 acted legally within three incidents but used
03:26:22 24 his discretion to exert deadly force in a
03:26:26 25 legally constitutional fashion give you concern

03:26:30 1 about his use of that same discretion going
03:26:33 2 forward? Because it does for us.

03:26:39 3 A It probably does for every citizen and every
03:26:44 4 elected official in our city too would have
03:26:46 5 that same concern. Legally, yeah, legally, we
03:26:52 6 have to return him if that's what happens.
03:26:56 7 Would there be concerns? Yes, there would.
03:26:58 8 There just would have to be. You know, I've
03:27:01 9 always -- the standard I've always told our
03:27:03 10 guys is you have to act reasonably and in good
03:27:07 11 faith, and if you usually do those things, then
03:27:09 12 you usually prevail in a proceeding.

03:27:11 13 Q Would you dispute returning him to the streets
03:27:14 14 under these circumstances would create
03:27:15 15 unnecessary risk for the department?

03:27:17 16 A I would not dispute that.

03:27:19 17 MR. BISKUPIC: That's all the
03:27:20 18 questions I have.

03:27:24 19 MR. NEUREUTHER: To follow up on that
03:27:26 20 just a little bit. When Steve asked you a few
03:27:28 21 minutes before, should he return, personally,
03:27:32 22 what's your opinion? You said, you know what,
03:27:34 23 for his own safety, probably not. But your
03:27:38 24 personal opinion, Chief, should he be returned
03:27:42 25 to the department?

03:27:43 1 THE WITNESS: My personal opinion is
03:27:48 2 that the city -- the way they have handled
03:27:51 3 things, they ruined this kid's life. They
03:27:54 4 ruined his professional life. When the city
03:27:57 5 put him on the -- you know, they gave me the
03:28:00 6 order the day before the police and fire
03:28:02 7 commission meeting and said, you and the city
03:28:05 8 administrator are ordered to make this guy's
03:28:07 9 employment change or whatever. I told the
03:28:09 10 city, "That's an illegal order. I'm not
03:28:11 11 following it." Because by law I have to follow
03:28:15 12 lawful written orders of the police -- mayor
03:28:21 13 and/or common council, and that's an illegal
03:28:26 14 order. So when they put that out there, that
03:28:28 15 just puts the police and fire commission almost
03:28:30 16 in a no-win situation so that they put him on
03:28:32 17 administrative suspension -- and I even said at
03:28:35 18 that meetings, "Leave him on administrative
03:28:38 19 leave" because until the district attorney
03:28:40 20 makes his decision, he's still getting paid,
03:28:43 21 and I can still utilize him. I can have him
03:28:45 22 working here part time. I can have him doing
03:28:48 23 filing, for that matter. They said, "No, we
03:28:51 24 are going to put him on administrative
03:28:53 25 suspension," which means I had to go collect

03:28:55 1 his badge and gun from him the next day. It
03:28:56 2 was an emotional time. And I think when this
03:28:58 3 is done, no matter how it turns out, Joseph
03:29:01 4 Mensah is going to be a very wealthy guy,
03:29:03 5 because right now the city's paying for his
03:29:06 6 attorney, the union's attorney. They have done
03:29:08 7 things and -- how will he ever be able to come
03:29:12 8 back because of the things that have been done
03:29:14 9 to him? You know, they have said, why don't he
03:29:16 10 -- why can't we get him a job working for the
03:29:19 11 fire department? It's like, are you kidding?
03:29:21 12 It doesn't work that way. Well, they said,
03:29:24 13 well, maybe he could get a job as a -- maybe he
03:29:26 14 will work for the FBI? I said, "Do you really
03:29:32 15 think that's the way it works?" Maybe he can
03:29:34 16 go up north and be a cop somewhere? No. Those
03:29:38 17 things follow you around. If you have ever
03:29:39 18 talked to Joe Mensah -- well, you obviously
03:29:41 19 heard him on the radio -- he's an articulate,
03:29:44 20 educated kid. He's from Wauwatosa. He's a
03:29:47 21 nice guy. He wants to do the job; put in a bad
03:29:50 22 situation, no doubt about it. And, you know, I
03:29:55 23 really wish none of these things would have
03:29:57 24 happened, of course.

03:29:58 25 I think the first one, the Gonzales

03:29:59 1 case, he had no choice. Absolutely no choice.
03:30:03 2 Gonzales had backed those guys up to their cars
03:30:07 3 swinging a samurai sword around at them, and
03:30:11 4 they kept telling him drop the weapon, drop the
03:30:13 5 weapon, or we are going to shoot you.
03:30:15 6 Gonzales's last words were, "Go for it."

03:30:19 7 Now skip past the Anderson case for a
03:30:21 8 bit, but then you got the Cole case, Alvin
03:30:24 9 Cole, 17 years old -- they will show pictures
03:30:26 10 of him, he's a want-to-be gangster type thing.
03:30:30 11 They have pictures -- we got pictures of him on
03:30:32 12 this -- showing on Facebook. He's got this
03:30:34 13 weapon that was stolen in Milwaukee, didn't
03:30:36 14 have an extended magazine, but when we got him
03:30:39 15 at the mall, he had a 30-round magazine in this
03:30:42 16 weapon, and it was fully loaded. He had
03:30:44 17 threatened the guy in the mall. The cops get
03:30:46 18 called to the mall; he takes off running. What
03:30:49 19 we think happened in the end is that Alvin shot
03:30:52 20 himself, shot himself in the arm. He was
03:30:55 21 reaching for the weapon, and he must have had
03:30:56 22 his hand on the trigger because he pulled it
03:30:58 23 out, he shot himself in the arm. The cops,
03:31:02 24 they seen -- they hear the shot. What are they
03:31:05 25 going to do? It's dark. So bad circumstances.

03:31:09 1 But then our city says, okay, well
03:31:11 2 let's, you know, now we have this equity
03:31:14 3 inclusion committee, and we have all these
03:31:17 4 other people that say, well, let's paint a
03:31:19 5 mural for the three people that were murdered
03:31:21 6 by Joseph Mensah. And one of the things that
03:31:23 7 almost prompted a complaint from me to the
03:31:25 8 city, and Pat knows about it, and they had a
03:31:29 9 public session where people could complain
03:31:31 10 about anything they wanted about the police
03:31:34 11 officers. They had a picture of Mensah behind
03:31:36 12 the microphone where people could talk, and
03:31:38 13 they called him a murderer, and next to that
03:31:41 14 they had my picture on TV on cable for five
03:31:44 15 hours as an accomplice to murder, and that just
03:31:48 16 set me off because I said, "You know what, if
03:31:51 17 you want to ruin my reputation, you got to do a
03:31:53 18 better job than that," because that's just
03:31:56 19 wrong, and I think the city probably realized,
03:31:59 20 yeah, we probably shouldn't have done that.
03:31:59 21 You know, but it's just -- we are in a bad
03:32:01 22 situation with this kid, and it's just
03:32:04 23 unfortunate.

03:32:05 24 MR. NEUREUTHER: The short answer is,
03:32:07 25 yeah, it's tough. Imagine him going forward,

03:32:09 1 but it didn't have to be this way. I think you
03:32:12 2 know with regard to Mensah, it's an anomaly, I
03:32:14 3 mean, three people in a career is an anomaly,
03:32:18 4 but --

03:32:20 5 THE WITNESS: Three guys with guns.

03:32:22 6 MS. JACOBS: So you said that you are
03:32:26 7 concerned about Officer Mensah's safety if he
03:32:28 8 were to be put back out on the road, right?

03:32:30 9 THE WITNESS: Yes.

03:32:32 10 MS. JACOBS: And I assume that at
03:32:34 11 least in part, given your comments, that it
03:32:36 12 really is a sort of volatile community
03:32:39 13 circumstances that you guys are working under
03:32:41 14 every day right now; is that right?

03:32:42 15 THE WITNESS: Yes. We've had 58
03:32:44 16 protests in our city since this all started.

03:32:49 17 MS. JACOBS: Okay. Are you concerned
03:32:51 18 about other officers' safety while out on the
03:32:56 19 road if Mensah returns, I mean, either because
03:33:00 20 they are riding in a car together or because
03:33:02 21 they respond to a scene together, things like
03:33:05 22 that?

03:33:06 23 THE WITNESS: Since I'm old enough to
03:33:11 24 be -- I'm the oldest one in the department.
03:33:13 25 Many of them I'm old enough to be their father,

03:33:15 1 and some of the new people I'm old enough to be
03:33:18 2 their grandfather; I'm concerned about every
3 one of them.

03:33:20 4 MS. JACOBS: I understand that. You
03:33:22 5 understand my question, though.

03:33:22 6 THE WITNESS: Yes, I do, I do, and if
03:33:25 7 I answer that yes, it sounds like I'm just -- I
03:33:28 8 think Mensah is horrible and a bad guy, and
03:33:31 9 he's not, but I am concerned about everybody's
03:33:33 10 safety, and, yes, because people are going to
03:33:37 11 look at Mensah, and they are going to try to
03:33:40 12 set him up or whatever, and because he's a
03:33:43 13 Wauwatosa police officer, they will continue to
03:33:47 14 harangue us and do the things, whatever they
03:33:49 15 are doing, against Wauwatosa because of that.
03:33:51 16 I believe that's true.

03:33:53 17 MS. JACOBS: I may have missed this
03:33:55 18 when Mr. Biskupic was asking questions, but you
03:33:57 19 did not give Officer Mensah permission to do
03:34:01 20 the radio interview, correct?

03:34:02 21 THE WITNESS: That is correct. I
03:34:05 22 found about this as it was coming on the air.

03:34:10 23 MR. BISKUPIC: Anybody else?

03:34:11 24 MR. MUELLER: You gave him an award
03:34:13 25 for Gonzales, some kind of award; is that true?

03:34:17 1 THE WITNESS: Yes.

03:34:18 2 MR. MUELLER: Did you consider that
03:34:19 3 in the Anderson case as well?

03:34:21 4 THE WITNESS: No. In the Gonzales
03:34:22 5 award -- every year we do a departmental
03:34:25 6 recognition and so on, and we gave him an
03:34:29 7 award -- a medal of valor or whatever because
03:34:31 8 they responded to that, and, you know, that
03:34:35 9 Gonzales was threatening his roommate trying to
03:34:37 10 cut him, and when Gonzales advanced on the
03:34:40 11 police officers, they took the action they did.

03:34:44 12 In their complaints, they make it sound
03:34:46 13 like we awarded him for murdering somebody, and
03:34:49 14 that's just not the case. It was a deadly
03:34:51 15 force incident, and -- yeah, in every one, and
03:34:55 16 even after every one of these cases, and I've
03:34:58 17 given a press statement, no matter who it is,
03:35:03 18 somebody gets shot by a police officer, it's a
03:35:05 19 tragedy for the families, for the cops, for the
03:35:09 20 community, you know, and I've expressed my
03:35:14 21 sympathies to the families, but I've also made
03:35:17 22 it clear, if you have a firearm or whatever and
03:35:20 23 a police officer tells you to put it down and
03:35:22 24 you don't put it down, there is a good chance
03:35:25 25 you are going to either be killed or badly

03:35:27 1 injured because the police officers are not
03:35:29 2 going to wait and have you shoot first at them.
03:35:32 3 They just won't. They are not trained that
03:35:35 4 way. So it's unfortunate. That's just the way
03:35:39 5 it is.

03:35:41 6 MR. BISKUPIC: Thank you for your
03:35:42 7 time, and we will go off the record.

8 (Proceedings concluded at 3:35 p.m.)
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18
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20
21
22
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24
25

\$	1:05 [1] - 1:16	330 [1] - 2:6	A	26:25, 27:15, 76:19
\$200 [1] - 81:16 \$50 [1] - 59:18 \$700,000 [1] - 33:16	2 2 [2] - 26:10, 52:8 2.05.030 [1] - 11:24 20 [4] - 26:19, 77:11, 78:19, 81:15 2010 [1] - 82:25 2015 [9] - 5:15, 5:25, 83:10, 83:24, 84:2, 85:1, 85:3, 86:14, 86:15 2016 [16] - 5:16, 18:12, 19:5, 27:9, 27:12, 28:10, 51:18, 68:22, 69:15, 69:17, 73:16, 73:18, 84:5, 85:2, 85:3, 86:19 2016-03 [1] - 26:8 2017 [1] - 73:19 2018 [8] - 27:10, 28:1, 73:19, 84:13, 84:21, 86:21 2019 [1] - 73:20 2020 [11] - 1:16, 6:1, 14:5, 17:5, 72:2, 72:19, 73:21, 83:1, 84:24, 110:9, 110:18 2021 [1] - 110:24 21 [2] - 1:16, 110:9 22 [3] - 18:13, 18:21, 19:13 23rd [1] - 48:25 24th [2] - 82:25, 110:18 26 [3] - 61:3, 61:10, 110:24 28 [2] - 17:5, 72:2 29 [1] - 4:13 2nd [1] - 84:24	3:00 [5] - 22:4, 22:6, 22:23, 24:5, 52:16 3:13 [1] - 35:7 3:15 [1] - 35:10 3:35 [2] - 1:17, 109:8 3rd [1] - 5:25	a.m [2] - 22:23, 52:16 ability [3] - 39:3, 93:2, 93:3 able [6] - 24:15, 39:9, 75:25, 92:15, 92:20, 103:7 absolutely [2] - 98:5, 104:1 Abuse [1] - 13:13 abusing [1] - 13:14 academy [2] - 8:1, 50:12 ACADIS [1] - 26:3 Acadis [4] - 7:19, 25:21, 25:25, 26:3 Acceptance [1] - 12:19 accident [1] - 28:3 accidently [2] - 77:1, 77:2 accomplice [1] - 105:15 according [7] - 22:13, 22:17, 28:23, 34:20, 35:8, 36:21, 52:18 account [1] - 66:21 accurate [1] - 88:25 accurately [1] - 52:25 accused [1] - 7:12 act [4] - 52:2, 72:11, 98:11, 101:10 acted [2] - 100:5, 100:23 acting [2] - 66:19, 98:9 action [3] - 16:9, 108:11, 110:15 actions [2] - 57:20, 60:22 activate [5] - 30:19, 31:25, 32:2, 32:24, 33:1 activated [9] - 26:12, 27:18, 28:12, 28:13, 28:17, 28:18, 29:10, 32:21, 78:18 activates [1] - 26:18 activating [1] - 31:3 activation [3] -	26:25, 27:15, 76:19 activities [1] - 34:11 actual [2] - 51:10, 52:6 addition [1] - 86:17 address [9] - 18:13, 42:23, 44:11, 44:17, 81:22, 81:23, 92:17, 99:21, 100:21 addressed [4] - 42:25, 47:24, 82:24, 90:20 addressing [1] - 42:6 adds [1] - 16:4 adequate [2] - 6:12 administer [2] - 35:6, 46:25 administering [2] - 37:11, 42:2 administrative [12] - 31:6, 69:11, 89:10, 89:11, 91:2, 91:5, 91:18, 91:23, 91:25, 102:17, 102:18, 102:24 administrator [2] - 73:4, 102:8 advanced [1] - 108:10 affixed [1] - 110:17 afoul [1] - 74:20 aftermath [1] - 30:15 afternoon [2] - 3:17, 22:6 afterwards [1] - 68:10 against [4] - 5:7, 72:18, 74:13, 107:15 agents [2] - 3:10, 6:9 aggressive [4] - 58:9, 58:23, 58:25, 64:18 aggrieved [1] - 72:13 ago [2] - 48:3, 90:21 agree [3] - 62:14, 72:20, 94:25 agreement [1] - 6:14 ahead [2] - 11:17, 22:2
0 040 [1] - 11:24		4 4 [1] - 88:8		
1 1 [2] - 86:2, 92:9 1,096 [1] - 6:6 1,149 [1] - 6:2 1,511 [1] - 6:7 10 [1] - 8:3 100 [2] - 13:5, 100:13 1045 [2] - 1:14, 2:3 106 [2] - 1:15, 2:3 10:00 [1] - 23:5 10:18 [2] - 14:5, 15:4 10th [1] - 6:1 11 [2] - 60:2, 84:5 1170 [1] - 2:6 12 [1] - 8:3 12:30 [3] - 22:17, 22:22, 24:5 13-01 [4] - 33:25, 51:13, 53:8, 62:13 13-08 [1] - 16:18 15 [2] - 62:24, 72:19 151 [1] - 5:16 15th [1] - 84:1 16 [4] - 63:2, 63:5, 63:13, 86:18 17 [1] - 104:9 17-11 [6] - 71:14, 71:17, 88:7, 89:4, 89:21, 90:15 18 [2] - 4:2, 5:21 18-10 [2] - 14:1, 14:14 19 [1] - 63:24 1973 [1] - 4:3 1975 [1] - 4:5 1984 [1] - 4:5 1986 [1] - 4:11 1990 [2] - 4:11, 4:13 19th [1] - 84:2	3 3 [1] - 26:10 30 [6] - 14:18, 26:20, 27:5, 27:6, 30:13, 77:11 30-mile-an-hour [1] - 29:23 30-round [1] - 104:15 31 [4] - 72:9, 72:10, 74:21, 74:24 318 [2] - 34:15, 34:16 33 [3] - 72:10, 74:21, 75:2	5 5 [3] - 2:17, 14:5, 92:10 53092 [1] - 2:4 53202 [1] - 2:7 57 [6] - 10:20, 11:23, 12:12, 12:16, 12:19, 13:10 58 [6] - 10:20, 11:23, 12:12, 12:16, 13:11, 106:15 5th [1] - 15:5		
		6 6 [2] - 63:4, 63:5 65 [6] - 10:20, 11:23, 12:12, 12:16, 13:13, 27:16, 27:19, 27:25 6th [1] - 89:17		
		7 7 [1] - 34:4 720 [1] - 50:20 738 [1] - 6:7		
		8 8 [3] - 34:3, 34:5, 35:21 80 [1] - 29:22 83 [5] - 72:13, 74:21, 75:4, 75:7		
		9 9 [4] - 84:13, 84:21, 92:11, 93:8 940.921 [1] - 38:24 95 [1] - 95:25 96 [3] - 4:18, 94:23, 95:25 97 [2] - 94:19, 94:23		

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<p>aid [25] - 33:21, 34:3, 34:11, 34:18, 35:7, 35:24, 37:11, 39:1, 39:4, 39:9, 39:10, 39:17, 40:2, 42:2, 44:21, 47:1, 47:5, 47:12, 47:15, 50:5, 50:10, 50:17, 50:19, 67:6, 67:7</p> <p>air [1] - 107:22</p> <p>alcohol [4] - 59:24, 61:2, 61:11</p> <p>ALICE [2] - 1:12, 110:5</p> <p>alive [2] - 40:22, 67:11</p> <p>allegations [3] - 14:9, 15:14, 41:9</p> <p>alleged [1] - 14:3</p> <p>alleges [4] - 18:15, 18:19, 31:23, 63:24</p> <p>alleging [1] - 10:17</p> <p>Allis [2] - 69:24, 70:4</p> <p>allow [1] - 21:20</p> <p>allows [1] - 20:21</p> <p>almost [3] - 86:10, 102:15, 105:7</p> <p>alone [5] - 44:7, 45:14, 49:1, 67:9, 67:13</p> <p>altered [1] - 48:18</p> <p>Alvin [9] - 47:12, 82:15, 84:23, 87:4, 88:21, 89:16, 89:19, 104:8, 104:19</p> <p>ambiguity [2] - 60:8, 60:16</p> <p>ambiguous [1] - 61:14</p> <p>amended [3] - 27:10, 28:1, 48:19</p> <p>Amendment [1] - 90:10</p> <p>analysis [4] - 52:3, 53:4, 62:13, 63:20</p> <p>analyzed [1] - 64:1</p> <p>Anderson [40] - 18:11, 18:17, 23:12, 30:9, 34:10, 35:16, 37:7, 44:17, 44:19, 46:6, 51:1, 51:5, 51:11, 53:1, 53:10, 55:5, 55:8, 55:16, 55:21, 56:6, 56:8, 57:7, 59:15, 60:9, 60:19, 62:2,</p>	<p>62:8, 63:3, 65:6, 69:2, 70:16, 76:20, 80:19, 81:20, 82:2, 82:7, 82:11, 104:7, 108:3</p> <p>Anderson's [5] - 18:22, 35:17, 36:24, 36:25, 57:21</p> <p>anomaly [4] - 47:18, 80:20, 106:2, 106:3</p> <p>answer [6] - 57:10, 66:20, 67:1, 88:2, 105:24, 107:7</p> <p>appalled [2] - 98:22, 99:2</p> <p>apparent [1] - 61:18</p> <p>appealed [1] - 76:8</p> <p>Appeals [1] - 42:9</p> <p>appear [4] - 10:25, 36:5, 36:24, 44:23</p> <p>appeared [2] - 2:4, 2:7</p> <p>applicable [2] - 62:11, 62:13</p> <p>application [1] - 46:23</p> <p>apply [2] - 63:20, 75:13</p> <p>appreciated [1] - 46:1</p> <p>approach [21] - 19:15, 20:19, 21:5, 22:13, 22:25, 23:7, 23:15, 24:1, 25:1, 25:18, 26:5, 38:17, 40:19, 44:10, 46:17, 49:3, 49:17, 49:22, 50:1, 53:6, 99:10</p> <p>approached [4] - 20:8, 37:5, 37:15, 62:1</p> <p>approaches [1] - 52:15</p> <p>approaching [5] - 18:16, 18:25, 20:17, 32:1, 35:6</p> <p>appropriate [16] - 14:17, 19:16, 21:3, 21:17, 25:19, 29:13, 36:2, 36:6, 37:18, 37:24, 53:19, 55:9, 68:4, 68:6, 72:15, 75:15</p> <p>approximate [1] - 36:20</p> <p>Area [1] - 69:21</p>	<p>area [7] - 9:6, 46:13, 69:18, 70:8, 71:20, 92:3, 92:4</p> <p>area-wide [1] - 69:18</p> <p>argues [1] - 55:18</p> <p>arise [1] - 83:4</p> <p>arises [1] - 93:15</p> <p>arm [2] - 104:20, 104:23</p> <p>armed [4] - 73:13, 80:24, 82:18, 88:13</p> <p>arrive [2] - 35:9, 36:22</p> <p>arrived [5] - 30:17, 35:18, 49:24, 79:14, 84:6</p> <p>arriving [2] - 35:13, 77:15</p> <p>arrowheads [1] - 82:14</p> <p>articulate [3] - 71:2, 99:9, 103:19</p> <p>aside [1] - 89:1</p> <p>asleep [5] - 23:12, 24:3, 24:10, 60:9, 62:8</p> <p>assailant [1] - 67:19</p> <p>assess [1] - 40:15</p> <p>assigned [2] - 3:7, 31:7</p> <p>assist [1] - 29:14</p> <p>assisting [1] - 3:9</p> <p>associated [3] - 14:12, 15:15, 36:11</p> <p>assume [7] - 13:20, 19:19, 31:24, 32:7, 45:24, 87:10, 106:10</p> <p>assumed [1] - 28:6</p> <p>assuming [5] - 38:19, 44:25, 52:25, 60:12, 61:17</p> <p>attached [2] - 30:12, 62:25</p> <p>attack [1] - 16:5</p> <p>attacked [1] - 46:13</p> <p>attacks [1] - 61:5</p> <p>attempt [1] - 32:8</p> <p>attempts [2] - 32:2, 80:11</p> <p>attention [2] - 9:13, 22:2</p> <p>attorney [11] - 3:15, 11:1, 52:10, 89:24, 90:1, 95:6, 102:19, 103:6,</p>	<p>110:12, 110:14</p> <p>attorney's [5] - 52:3, 89:3, 89:23, 100:3</p> <p>attorneys [2] - 76:7, 90:12</p> <p>audio [5] - 27:7, 30:14, 45:16, 55:17, 78:19</p> <p>August [2] - 49:6, 82:25</p> <p>Aurora [1] - 4:7</p> <p>authorization [1] - 90:19</p> <p>authorized [1] - 70:12</p> <p>automatic [1] - 27:1</p> <p>automatically [2] - 27:14, 28:15</p> <p>available [1] - 63:2</p> <p>Avenue [1] - 2:6</p> <p>average [1] - 6:22</p> <p>await [1] - 36:3</p> <p>awake [1] - 25:13</p> <p>award [4] - 107:24, 107:25, 108:5, 108:7</p> <p>awarded [1] - 108:13</p> <p>aware [18] - 11:4, 11:21, 12:6, 12:11, 13:11, 17:11, 17:12, 18:6, 24:20, 24:24, 31:4, 31:5, 70:16, 71:11, 87:5, 87:6, 90:2, 96:23</p> <p>awfully [1] - 99:14</p>	<p>103:1</p> <p>badly [1] - 108:25</p> <p>bags [1] - 39:10</p> <p>balancing [1] - 37:10</p> <p>bar [2] - 59:17, 59:23</p> <p>BARBELN [2] - 1:12, 110:5</p> <p>barely [1] - 64:15</p> <p>BARRY [2] - 1:11, 110:8</p> <p>Barry [2] - 2:7, 3:14</p> <p>based [7] - 5:10, 11:22, 24:24, 25:16, 74:10, 86:5, 96:11</p> <p>basic [1] - 21:14</p> <p>battles [1] - 90:11</p> <p>became [5] - 3:25, 4:4, 4:5, 61:18, 95:2</p> <p>becomes [1] - 48:11</p> <p>before [19] - 1:12, 8:19, 9:23, 10:5, 17:7, 30:6, 30:14, 34:11, 43:11, 49:2, 53:2, 54:25, 56:16, 67:5, 79:18, 88:12, 100:1, 101:21, 102:6</p> <p>beginning [1] - 93:6</p> <p>behalf [2] - 2:4, 2:7</p> <p>behavior [2] - 98:22, 99:3</p> <p>behind [2] - 21:25, 105:11</p> <p>belief [2] - 52:6, 52:9</p> <p>believes [3] - 37:3, 53:20, 76:3</p> <p>benefits [1] - 12:6</p> <p>best [4] - 15:25, 21:12, 21:16, 22:6</p> <p>better [5] - 14:8, 15:11, 41:4, 94:24, 105:18</p> <p>between [9] - 5:15, 5:25, 9:20, 24:4, 35:4, 35:11, 44:5, 65:6, 81:15</p> <p>beyond [2] - 42:21, 86:2</p> <p>BISCUPIC [1] - 3:21</p> <p>Biskupic [5] - 1:14, 3:3, 3:6, 90:25, 107:18</p> <p>BISKUPIC [9] -</p>
--	--	---	---	--

BROWN & JONES REPORTING, INC.

414-224-9533

2:2, 2:2, 3:2, 7:4, 7:13, 9:18, 10:15, 16:15, 20:14, 22:11, 24:22, 26:4, 26:6, 32:20, 33:19, 34:13, 44:1, 45:7, 46:20, 50:24, 51:8, 58:8, 62:5, 64:25, 66:11, 67:25, 71:13, 71:19, 76:11, 76:14, 80:1, 80:6, 87:14, 87:18, 88:5, 92:2, 101:17, 107:23, 109:6 Biskupic [1] - 2:17 bit [14] - 8:18, 10:8, 28:16, 31:13, 38:16, 39:24, 47:18, 50:1, 59:22, 67:5, 87:17, 98:4, 101:20, 104:8 black [4] - 73:10, 75:22, 75:24, 76:4 bleeding [1] - 39:19 blinding [3] - 18:23, 20:25, 21:9 blood [2] - 39:21, 61:2 blunt [1] - 96:17 board [1] - 90:21 bodily [7] - 51:25, 53:24, 54:6, 54:12, 54:18, 56:24, 58:5 body [6] - 33:13, 52:8, 53:3, 60:10, 76:21, 84:15 book [1] - 18:13 bother [1] - 96:6 bothered [2] - 98:22, 98:25 bothers [1] - 15:8 bounds [2] - 99:24 Boy [1] - 40:11 break [5] - 34:7, 35:10, 35:25, 50:25, 71:17 breaking [2] - 59:4, 59:8 breathing [3] - 38:10, 44:23, 45:2 bribes [1] - 12:19 brief [1] - 3:22 briefly [1] - 5:14 bright [1] - 64:17 bring [2] - 74:16, 95:3 broad [1] - 58:11 broke [2] - 51:23, 52:4	brought [1] - 77:14 buddy [1] - 67:17 bullet [1] - 62:24 bump [1] - 77:1 bunch [2] - 13:3, 70:24 Bureau [1] - 5:20 button [16] - 27:3, 30:22, 31:15, 31:18, 32:5, 77:2, 77:3, 77:10, 77:17, 78:4, 78:17, 78:21, 78:24, 79:8, 79:20, 87:20 buy [1] - 13:4 BY [18] - 3:21, 7:13, 10:15, 16:15, 22:11, 26:6, 33:19, 34:13, 46:20, 51:8, 58:8, 62:5, 67:25, 71:19, 76:14, 80:6, 88:5, 92:2 C cable [1] - 105:14 cadre [1] - 9:23 calculation [1] - 63:3 calculus [1] - 61:23 California [1] - 94:12 cam [1] - 76:22 camera [17] - 26:12, 26:16, 26:18, 26:22, 27:17, 28:11, 28:13, 29:10, 29:18, 30:5, 32:24, 43:3, 43:7, 77:1, 78:18, 80:4, 80:12 camera's [2] - 87:21, 88:1 cameras [1] - 33:13 caps [1] - 14:11 Captain [2] - 69:3, 83:21 capture [3] - 27:5, 29:11, 77:12 captured [1] - 55:17 captures [1] - 29:15 car [30] - 20:1, 20:5, 20:19, 21:10, 22:23, 23:10, 24:3, 24:10, 29:21, 31:20, 32:2, 32:17, 39:25, 44:10, 44:13, 45:23, 45:24, 46:17, 49:3,	49:22, 50:1, 59:5, 59:6, 59:8, 61:21, 62:2, 67:10, 67:17, 106:20 card [2] - 12:24, 12:25 cards [1] - 13:5 care [1] - 8:14 career [3] - 5:25, 43:22, 106:3 careful [1] - 20:19 carling [1] - 99:8 carry [1] - 39:10 cars [4] - 97:21, 97:22, 97:23, 104:2 case [25] - 16:11, 20:1, 31:9, 39:21, 42:8, 47:13, 51:22, 57:21, 77:2, 82:1, 82:11, 82:18, 84:23, 87:4, 88:21, 89:16, 91:8, 91:14, 92:25, 98:20, 104:1, 104:7, 104:8, 108:3, 108:14 cases [1] - 108:16 catch [1] - 84:11 cautionary [1] - 90:23 cell [1] - 98:16 certain [6] - 10:9, 17:24, 18:1, 46:16, 46:18, 50:3 certainly [12] - 6:11, 14:25, 17:17, 19:13, 24:15, 29:7, 58:14, 60:7, 62:11, 81:19, 87:6, 90:3 certified [1] - 50:14 certify [2] - 110:7, 110:11 cetera [1] - 24:5 chain [1] - 72:15 chamber [1] - 62:24 chance [2] - 57:9, 108:24 change [2] - 99:12, 102:9 changed [1] - 54:24 changing [1] - 33:4 characterize [1] - 58:22 charge [1] - 17:13 charged [1] - 13:14 chase [3] - 22:19, 23:2, 23:25	chased [1] - 22:15 check [1] - 35:23 checking [2] - 20:5, 70:22 chest [1] - 39:11 CHIEF [2] - 1:11, 110:8 Chief [9] - 2:7, 3:14, 3:17, 12:25, 34:17, 51:19, 67:4, 71:25, 101:24 chief [14] - 3:22, 3:25, 4:1, 4:6, 4:7, 4:11, 4:13, 7:8, 7:11, 48:16, 65:5, 75:6, 85:15, 94:24 choice [2] - 104:1 choose [5] - 32:24, 58:16, 58:17, 58:18, 97:14 chooses [2] - 22:24, 23:25 choosing [2] - 16:25, 17:21 chose [1] - 22:12 circled [1] - 25:10 circuit [1] - 76:8 Circuit [1] - 42:9 circumstance [3] - 19:17, 36:5, 99:22 circumstances [17] - 32:5, 40:7, 40:13, 40:24, 42:17, 42:21, 54:5, 55:3, 58:15, 76:24, 92:5, 92:8, 100:12, 101:14, 104:25, 106:13 cite [1] - 86:14 cites [3] - 10:19, 14:18, 38:23 cities [1] - 97:19 citizen [2] - 59:5, 101:3 city [16] - 4:6, 4:9, 73:3, 94:1, 94:11, 95:4, 97:25, 101:4, 102:2, 102:4, 102:7, 102:10, 105:1, 105:8, 105:19, 106:16 City [1] - 12:8 city's [1] - 103:5 claim [2] - 7:7, 72:18 claims [1] - 76:20 clarified [1] - 28:2 Class [1] - 38:25 clear [5] - 12:1, 12:20, 25:20,	87:20, 108:22 cleared [1] - 94:5 clearly [6] - 12:3, 42:12, 57:13, 60:11, 80:9, 88:20 clears [1] - 95:6 climate [1] - 94:15 clock [1] - 40:11 close [6] - 36:9, 38:16, 39:16, 57:5, 61:19, 61:25 closed [1] - 82:8 closes [1] - 23:5 closing [1] - 23:21 clothes [1] - 8:21 Code [2] - 11:24, 13:17 coffee [1] - 12:23 cognac [1] - 59:18 Cole [11] - 47:12, 70:15, 82:15, 84:23, 87:4, 88:21, 88:22, 89:16, 89:19, 104:8, 104:9 collect [1] - 102:25 comfortable [2] - 21:21, 25:7 coming [3] - 21:8, 21:24, 107:22 command [3] - 4:16, 56:8, 72:16 commands [5] - 52:20, 53:1, 54:25, 55:6, 56:11 commencing [1] - 1:16 commendation [1] - 70:24 comment [2] - 11:13, 66:12 commenting [1] - 89:1 comments [9] - 72:6, 74:5, 74:7, 74:18, 74:22, 75:14, 75:19, 89:15, 106:11 COMMISSION [1] - 1:4 commission [14] - 72:7, 72:16, 72:21, 72:25, 73:7, 73:15, 73:25, 74:20, 75:2, 75:11, 75:17, 76:13, 102:7, 102:15 Commission [4] - 2:4, 3:5, 3:8,
---	--	---	---	---

				D daily [2] - 10:1, 10:2 Dale [5] - 2:10, 3:11, 4:4, 4:5, 7:18 danger [2] - 53:23, 58:5 dark [4] - 22:5, 32:12, 81:14, 104:25 data [1] - 29:15 days [1] - 94:25 dead [1] - 37:8 deadly [17] - 34:4, 34:19, 35:20, 40:15, 47:19, 51:14, 52:1, 52:6, 53:7, 53:19, 55:1, 58:14, 83:5, 93:17, 100:19, 100:24, 108:14 Deadly [1] - 34:4 deadly-force [1] - 40:15 deal [1] - 71:21 dealing [2] - 66:25, 71:3 deals [1] - 18:14 death [3] - 52:7, 54:12, 58:6 debriefing [1] - 66:2 deceased [2] - 38:5, 64:12 decide [2] - 25:6, 95:8 decided [5] - 21:11, 23:14, 74:15, 78:8, 78:10 decision [8] - 17:19, 21:4, 21:17, 22:9, 23:2, 102:20 decision-making [2] - 21:4, 22:9 deems [1] - 29:12 deescalate [1] - 65:13 defend [1] - 57:9 defense [6] - 10:18, 11:20, 12:3, 12:10, 41:22, 81:3 defining [2] - 86:2, 92:7 definition [3] - 14:6, 15:18, 83:2 deflect [1] - 85:11 delay [9] - 39:24, 40:6, 42:4, 42:10, 42:24, 44:4, 44:5, 44:11, 44:17 delays [1] - 42:1 deleted [1] - 27:6
110:24 committed [4] - 81:7, 81:12, 81:13, 88:19 committee [1] - 105:3 committing [3] - 81:6, 81:11, 88:18 common [3] - 16:10, 80:22, 102:13 communicate [1] - 72:14 communication [1] - 75:6 community [3] - 71:5, 106:12, 108:20 comparable [1] - 32:23 compare [2] - 32:25, 77:13 comparing [1] - 28:10 comparison [2] - 6:3, 77:25 compassionate [1] - 99:8 complain [1] - 105:9 complainant [3] - 55:14, 55:18, 62:17 complaint [17] - 5:7, 6:24, 10:16, 10:19, 13:25, 14:17, 16:24, 17:14, 18:15, 18:19, 31:23, 33:21, 38:23, 62:16, 63:24, 68:25, 105:7 complaints [3] - 16:18, 74:13, 108:12 completely [3] - 81:5, 81:9, 88:16 complimentary [1] - 70:25 comply [1] - 32:8 computer [1] - 26:13 conceding [1] - 60:6 concern [9] - 93:22, 94:3, 95:21, 96:9, 97:7, 97:10, 99:19, 100:25, 101:5 concerned [9] - 14:24, 36:25, 94:3, 95:17, 96:7, 106:7, 106:17, 107:2,	107:9 concerns [10] - 42:5, 42:24, 94:9, 94:18, 94:19, 95:1, 96:1, 96:15, 97:8, 101:7 concluded [1] - 109:8 concluding [1] - 1:17 conclusion [1] - 6:14 condition [1] - 36:24 conditions [1] - 29:19 conduct [4] - 14:19, 15:9, 92:23, 98:25 conducted [2] - 59:14, 69:10 conference [1] - 9:25 confidential [1] - 18:3 confirm [1] - 68:3 confirmation [1] - 68:4 confirmed [1] - 20:18 conflict [1] - 11:25 confrontation [4] - 40:15, 43:2, 65:17, 67:21 confrontations [1] - 70:18 confusing [2] - 28:8, 73:13 confusion [1] - 33:24 conjecture [1] - 37:17 connection [2] - 3:4, 5:7 conservative [1] - 16:21 consider [2] - 11:7, 108:2 considered [1] - 74:5 consistent [4] - 5:18, 5:19, 56:10, 79:1 console [1] - 57:5 constantly [2] - 26:22, 26:23 constitutes [1] - 32:13 constitutional [3] - 14:22, 42:13, 100:25 construe [1] -	79:12 consumed [1] - 59:20 consumer [1] - 59:21 consuming [1] - 59:24 contact [3] - 14:17, 25:5, 29:12 contacts [2] - 20:12, 34:24 contend [1] - 19:2 contended [1] - 56:4 contends [2] - 55:14, 62:18 content [1] - 59:24 contention [1] - 34:18 context [3] - 15:7, 30:20, 80:1 continue [3] - 80:21, 107:13 continued [1] - 53:1 continuously [1] - 29:2 contract [1] - 13:19 contracting [2] - 13:18, 13:22 control [3] - 35:23, 89:12, 91:3 conversely [1] - 42:14 cop [5] - 6:22, 66:19, 98:16, 99:2, 103:16 cops [10] - 59:7, 94:19, 94:23, 97:19, 98:6, 98:10, 99:4, 104:17, 104:23, 108:19 copy [2] - 14:2, 34:1 correct [18] - 15:21, 17:1, 17:9, 26:23, 28:21, 32:9, 45:19, 51:16, 75:20, 85:20, 86:7, 87:8, 89:5, 93:18, 93:20, 93:21, 107:20, 107:21 correction [1] - 81:13 council [1] - 102:13 counsel [3] - 51:2, 110:12, 110:14 counseling [3] - 68:10, 68:12,	71:15 counting [1] - 94:23 country [2] - 94:12, 98:21 COUNTY [1] - 110:2 county [5] - 19:3, 23:20, 23:22, 24:8, 32:11 couple [13] - 30:2, 30:22, 35:7, 40:6, 50:10, 68:1, 73:5, 77:17, 78:21, 79:8, 79:10, 79:20, 80:8 course [7] - 5:23, 14:20, 16:8, 33:12, 38:11, 40:17, 103:24 Court [1] - 42:9 court [4] - 42:12, 76:8, 92:24, 93:2 courts [4] - 42:2, 42:15, 92:18, 93:1 cover [2] - 38:1, 50:19 covered [3] - 25:2, 28:3, 28:7 CPR [4] - 39:9, 39:18, 50:12, 50:13 crazy [1] - 85:7 create [4] - 54:11, 60:16, 93:8, 101:14 creates [3] - 55:24, 60:8, 96:3 credible [1] - 55:15 Creek [1] - 69:25 crime [3] - 81:15, 81:21, 82:1 crimes [7] - 81:6, 81:8, 81:11, 81:12, 81:13, 88:18, 88:19 crisis [2] - 97:25, 98:1 critical [13] - 68:17, 70:10, 73:10, 73:12, 75:22, 82:22, 83:2, 83:3, 83:8, 85:6, 85:14, 85:25, 86:4 curious [1] - 83:16 current [1] - 94:25 customer [1] - 82:16 cut [2] - 82:14, 108:10	

<p>deleting [1] - 27:1</p> <p>DeMarco [3] - 2:11, 3:11, 51:17</p> <p>DEMARCO [7] - 20:16, 21:2, 21:23, 22:8, 48:16, 49:14, 49:20</p> <p>demonstrations [1] - 26:16</p> <p>denied [1] - 55:21</p> <p>denominator [1] - 80:23</p> <p>Department [3] - 34:24, 78:12, 93:23</p> <p>department [40] - 5:10, 5:11, 6:21, 10:19, 13:4, 13:22, 15:3, 16:1, 17:10, 17:17, 17:23, 17:24, 26:17, 28:5, 30:2, 31:2, 34:23, 38:12, 38:20, 62:23, 68:2, 69:11, 75:1, 82:21, 84:22, 85:8, 85:12, 86:11, 89:14, 90:4, 92:6, 93:12, 94:1, 97:13, 99:6, 100:11, 101:15, 101:25, 103:11, 106:24</p> <p>departmental [1] - 108:5</p> <p>departments [3] - 69:19, 70:13, 85:9</p> <p>depth [1] - 63:22</p> <p>describe [2] - 7:23, 9:19</p> <p>described [3] - 32:7, 45:21, 46:5</p> <p>describes [1] - 26:11</p> <p>designated [1] - 34:16</p> <p>detail [1] - 16:23</p> <p>detailed [2] - 5:12, 69:10</p> <p>Detective [4] - 78:11, 78:20, 80:7, 80:9</p> <p>detectives [1] - 83:12</p> <p>determinative [1] - 62:12</p> <p>device [4] - 30:11, 31:10, 32:3, 80:5</p> <p>dialogue [1] - 65:6</p> <p>dictates [1] - 17:15</p> <p>difference [3] - 24:4, 41:1, 47:5</p>	<p>differences [1] - 81:19</p> <p>different [5] - 41:21, 53:13, 55:11, 66:23, 97:19</p> <p>differently [6] - 20:9, 58:19, 59:2, 59:9, 66:4, 100:2</p> <p>difficult [1] - 99:17</p> <p>dilemma [1] - 55:24</p> <p>direct [5] - 35:2, 39:20, 75:8, 88:7, 88:8</p> <p>directed [2] - 72:17, 92:22</p> <p>directing [1] - 74:2</p> <p>direction [1] - 110:10</p> <p>directly [2] - 11:19, 110:15</p> <p>director [1] - 4:8</p> <p>directs [1] - 34:24</p> <p>disarm [1] - 70:19</p> <p>discharging [1] - 78:16</p> <p>disciplinary [1] - 90:16</p> <p>discipline [5] - 4:21, 12:13, 12:17, 29:25, 46:22</p> <p>disciplined [3] - 29:16, 29:24, 46:24</p> <p>disciplines [1] - 30:3</p> <p>discretion [18] - 18:8, 18:9, 18:14, 18:16, 18:20, 19:9, 19:14, 19:18, 23:18, 24:7, 25:15, 58:12, 58:22, 99:23, 100:11, 100:16, 100:24, 101:1</p> <p>discuss [2] - 5:8, 14:25</p> <p>discussing [1] - 88:12</p> <p>discussion [1] - 24:25</p> <p>disparage [2] - 75:16, 75:18</p> <p>disparaging [2] - 64:14, 74:19</p> <p>dispatch [5] - 34:20, 34:22, 35:2, 38:19, 52:14</p> <p>dispatcher [1] - 4:3</p>	<p>displayed [2] - 80:25, 88:14</p> <p>dispute [2] - 101:13, 101:16</p> <p>disregard [2] - 80:22, 92:12</p> <p>disrespect [2] - 72:12, 75:2</p> <p>distribute [1] - 13:9</p> <p>district [9] - 52:3, 52:10, 89:3, 89:23, 89:24, 90:1, 95:5, 100:3, 102:19</p> <p>doctor [1] - 41:2</p> <p>document [1] - 83:21</p> <p>documented [1] - 15:3</p> <p>documents [1] - 5:13</p> <p>Dodge [2] - 4:10, 4:12</p> <p>done [16] - 16:4, 23:24, 37:12, 37:13, 40:12, 40:23, 40:25, 41:19, 41:25, 47:25, 50:6, 65:9, 75:21, 77:25, 103:3, 103:6, 103:8, 105:20</p> <p>door [2] - 44:10, 44:20</p> <p>doubt [1] - 103:22</p> <p>down [19] - 18:23, 20:22, 20:24, 21:8, 34:22, 35:10, 35:25, 36:13, 37:16, 45:17, 51:23, 52:5, 53:17, 54:20, 54:22, 56:9, 108:23, 108:24</p> <p>downgraded [1] - 42:11</p> <p>downs [1] - 25:3</p> <p>dozen [5] - 85:13, 85:16, 85:23, 86:3, 86:7</p> <p>drafting [1] - 27:22</p> <p>drank [1] - 59:18</p> <p>driver [3] - 20:25, 54:9, 57:6</p> <p>driver's [5] - 18:18, 19:1, 19:8, 21:6, 57:3</p> <p>drivers [1] - 19:23</p> <p>driving [4] - 8:14, 29:8, 29:18, 29:22</p> <p>drop [3] - 87:16, 104:4</p> <p>dropping [1] -</p>	<p>53:14</p> <p>drops [1] - 56:8</p> <p>drove [1] - 23:8</p> <p>duration [2] - 7:22, 8:25</p> <p>During [1] - 29:12</p> <p>during [19] - 5:21, 27:24, 32:3, 35:14, 36:1, 42:4, 42:9, 42:23, 50:7, 50:20, 65:9, 71:23, 72:1, 72:18, 73:6, 76:19, 78:12, 78:13, 88:10</p> <p>duties [4] - 4:19, 92:11, 92:21, 93:4</p> <p>duty [12] - 13:12, 14:25, 15:4, 15:6, 92:4, 92:9, 92:10, 92:16, 92:20, 93:13, 93:14, 93:15</p> <p>E</p> <p>early [1] - 49:6</p> <p>East [1] - 2:6</p> <p>educated [2] - 99:11, 103:20</p> <p>effect [1] - 90:6</p> <p>eight [2] - 35:10, 35:12</p> <p>Eighth [1] - 42:8</p> <p>either [13] - 11:19, 25:6, 25:14, 38:18, 40:22, 41:1, 61:10, 69:7, 80:24, 88:14, 96:7, 106:19, 108:25</p> <p>elected [1] - 101:4</p> <p>emanating [1] - 61:21</p> <p>emergency [4] - 18:24, 27:15, 27:18, 33:8</p> <p>emotional [1] - 103:2</p> <p>emotions [1] - 15:24</p> <p>employee [2] - 110:12, 110:13</p> <p>employment [1] - 102:9</p> <p>encompassed [1] - 88:21</p> <p>encounter [3] - 18:11, 32:11, 65:10</p> <p>end [3] - 42:14, 100:15, 104:19</p> <p>ends [1] - 35:5</p> <p>enforce [2] - 90:15, 98:7</p>	<p>enforcement [10] - 3:24, 4:2, 6:8, 17:18, 41:3, 42:5, 42:24, 44:18, 47:17, 98:1</p> <p>enforcing [1] - 100:17</p> <p>engage [3] - 14:19, 17:3, 80:11</p> <p>engaged [2] - 65:25, 81:20</p> <p>enter [1] - 35:4</p> <p>entire [2] - 64:3, 81:2</p> <p>entities [1] - 100:4</p> <p>entitled [1] - 100:11</p> <p>epaulet [1] - 31:11</p> <p>equitably [1] - 13:9</p> <p>equity [1] - 105:2</p> <p>equivalent [1] - 6:20</p> <p>especially [7] - 13:18, 14:10, 14:11, 15:15, 20:20, 21:8, 31:1</p> <p>et [1] - 24:5</p> <p>evaluation [1] - 68:8</p> <p>evening [2] - 22:14, 84:4</p> <p>event [1] - 17:19</p> <p>eventually [2] - 11:16, 44:16</p> <p>evidence [4] - 42:10, 73:23, 77:8, 92:23</p> <p>exactly [3] - 48:2, 74:8, 74:11</p> <p>Examination [2] - 1:11, 2:16</p> <p>examination [1] - 110:8</p> <p>EXAMINATION [1] - 3:20</p> <p>examiner [3] - 45:8, 59:19, 60:4</p> <p>example [5] - 28:20, 29:14, 42:8, 55:18, 61:20</p> <p>exceeded [1] - 27:25</p> <p>excellent [1] - 7:20</p> <p>excessive [1] - 51:13</p> <p>exchange [1] - 55:16</p> <p>excuse [4] - 6:4, 6:5, 16:13, 78:13</p>
--	--	---	---	--

exercise [1] - 92:20 exercised [1] - 19:8 exercises [1] - 100:16 exercising [3] - 24:7, 99:23, 100:10 exert [1] - 100:24 Exhibit [1] - 2:18 exhibits [1] - 72:12 exist [2] - 69:15, 71:10 existence [1] - 69:5 expect [1] - 20:7 expected [2] - 14:16, 20:23 expense [1] - 33:14 experience [4] - 6:9, 24:24, 25:17, 66:1 Expires [1] - 110:24 explain [1] - 23:1 explained [2] - 28:25, 78:18 explaining [1] - 79:13 explicit [1] - 56:22 explicitly [1] - 39:4 expound [1] - 98:4 express [1] - 96:10 expressed [1] - 108:20 extended [1] - 104:14 eye [1] - 10:12 eyes [1] - 23:14	factors [2] - 19:18, 62:11 facts [7] - 51:22, 52:12, 56:13, 60:5, 60:7, 60:13, 60:14 factual [1] - 10:22 fall [1] - 39:1 failed [1] - 7:8 failing [1] - 33:21 failure [3] - 34:18, 46:25, 92:11 fair [1] - 60:15 fairly [1] - 59:16 faith [4] - 52:2, 66:19, 100:5, 101:11 falling [2] - 60:9, 62:8 familiar [3] - 4:20, 8:11, 68:18 families [2] - 108:19, 108:21 family [2] - 59:20, 76:20 far [6] - 16:6, 39:12, 60:17, 76:1, 85:15, 96:11 fashion [1] - 100:25 fast [7] - 29:18, 29:20, 29:21, 57:8, 57:21, 57:24, 63:16 fatalities [1] - 90:17 fatally [2] - 83:11, 96:21 father [1] - 106:25 favorites [1] - 18:4 FBI [3] - 3:10, 6:9, 103:14 February [3] - 16:3, 84:24, 89:17 federal [1] - 51:21 fees [3] - 12:14, 12:15, 12:20 fellow [6] - 24:25, 30:16, 34:9, 77:15, 95:20, 96:12 felony [1] - 83:5 felt [2] - 46:6, 54:3 few [4] - 31:1, 86:12, 101:20 field [1] - 9:21 fight [1] - 90:11 figure [1] - 44:14 file [2] - 37:23, 70:23 filed [1] - 7:7 filing [1] - 102:23 fill [1] - 68:18	filled [1] - 69:1 finally [2] - 8:18, 84:13 financially [1] - 110:14 FIRE [1] - 1:4 fire [29] - 16:5, 38:11, 38:20, 58:16, 58:18, 63:19, 64:23, 72:7, 72:16, 72:20, 72:25, 73:7, 73:15, 73:24, 74:19, 75:2, 75:11, 75:16, 76:12, 83:13, 83:17, 84:14, 84:25, 87:4, 93:20, 102:6, 102:15, 103:11 Fire [4] - 2:4, 3:5, 3:7, 34:24 firearm [9] - 37:1, 48:14, 52:17, 53:4, 56:15, 60:12, 62:22, 71:5, 108:22 firearms [4] - 6:18, 7:2, 7:5, 62:21 fired [21] - 46:7, 62:17, 62:19, 63:5, 63:15, 63:16, 63:25, 80:5, 81:1, 83:10, 85:10, 85:17, 85:20, 86:16, 86:18, 86:19, 86:21, 86:24, 88:15, 88:23, 89:19 fires [2] - 64:8, 64:9 firing [4] - 56:16, 64:7, 64:22, 73:1 firm [2] - 49:7, 49:8 Firm [1] - 3:4 first [54] - 5:6, 5:21, 8:1, 10:4, 10:22, 15:2, 16:25, 18:12, 23:11, 25:10, 26:9, 26:14, 27:22, 28:21, 29:3, 30:25, 34:20, 35:7, 35:14, 35:24, 36:1, 37:11, 37:14, 39:9, 39:10, 39:17, 40:2, 46:2, 46:23, 48:5, 50:5, 50:9, 50:17, 50:19, 51:19, 54:2, 59:1, 62:21, 63:17, 64:8, 68:2, 72:8, 72:19, 73:8, 73:22, 77:20, 79:14, 83:1, 83:9, 89:9, 89:18,	92:6, 103:25, 109:2 First [1] - 90:10 fit [3] - 92:9, 92:19, 93:14 fitness [1] - 92:4 five [8] - 85:13, 85:17, 85:24, 86:4, 86:20, 93:11, 100:9, 105:14 fled [1] - 83:10 flopping [1] - 32:6 flops [1] - 31:13 Floyd [1] - 98:20 focus [5] - 51:3, 52:23, 74:18, 81:8, 95:4 focuses [2] - 42:3, 94:16 focusing [1] - 72:6 folder [1] - 21:13 follow [7] - 68:1, 92:1, 95:16, 99:18, 101:19, 102:11, 103:17 follow-up [1] - 68:1 followed [1] - 55:5 following [5] - 14:7, 27:20, 30:18, 52:20, 102:11 follows [1] - 85:7 force [23] - 5:24, 6:13, 33:25, 34:4, 34:19, 35:21, 40:15, 47:19, 51:13, 51:14, 52:1, 52:6, 53:7, 53:19, 55:1, 58:14, 68:22, 83:5, 92:14, 93:17, 100:19, 100:24, 108:15 forfeiture [1] - 81:15 form [8] - 68:17, 68:19, 68:21, 69:1, 69:5, 69:9, 69:13, 69:14 formulate [1] - 40:20 Fort [2] - 4:10, 4:11 forth [1] - 55:15 forthright [1] - 82:4 forward [4] - 27:4, 74:16, 101:2, 105:25 forwarded [2] - 82:21, 82:24	forwards [1] - 66:15 four [5] - 4:12, 6:4, 8:8, 8:9, 47:10 fourth [2] - 93:16, 94:1 frame [2] - 66:15 free [3] - 70:2, 91:18, 91:20 friend [1] - 59:17 friends [1] - 59:21 front [11] - 18:22, 19:7, 20:20, 21:5, 21:9, 25:1, 25:18, 52:17, 71:9, 72:8 front-to-front [1] - 25:1 FTO [4] - 7:23, 9:22, 25:22, 25:24 FTOs [1] - 9:24 fuel [1] - 16:4 fully [2] - 77:9, 104:16 functioning [1] - 32:4 fund [4] - 10:18, 11:20, 12:3, 12:10 fundraising [1] - 10:23 future [2] - 65:7, 66:5
G				
gain [2] - 10:21, 12:1 gamut [1] - 70:19 gangster [1] - 104:10 gather [3] - 20:4, 43:6, 92:22 general [2] - 29:4, 92:4 generally [1] - 59:9 gentlemen [1] - 80:8 geography [1] - 10:13 George [1] - 98:20 gift [3] - 12:24, 12:25, 13:5 gifts [1] - 12:19 given [14] - 6:8, 15:7, 40:6, 45:20, 45:21, 45:22, 55:3, 55:19, 56:8, 68:24, 90:1, 91:5, 106:11, 108:17 glad [1] - 41:23 Glen [2] - 1:14, 2:3 Gonzales [13] -				

28:22, 60:24, 61:2, 64:20, 82:11, 82:13, 86:17, 103:25, 104:2, 107:25, 108:4, 108:9, 108:10 Gonzales's [1] - 104:6 grandfather [1] - 107:2 granting [1] - 16:20 great [9] - 33:14, 51:25, 52:7, 53:23, 54:6, 54:12, 54:18, 56:24, 58:5 Greenfield [2] - 69:25, 70:3 GRGB [1] - 2:5 group [2] - 49:21, 69:24 guess [17] - 10:23, 11:22, 18:5, 26:14, 27:21, 31:21, 33:15, 35:25, 37:12, 54:1, 56:25, 58:21, 60:4, 62:6, 63:3, 63:13, 66:7 guessing [1] - 66:13 guidance [1] - 63:6 gun [33] - 41:5, 41:12, 41:13, 41:15, 41:17, 43:12, 44:11, 44:12, 44:20, 52:21, 54:8, 54:10, 54:11, 54:13, 54:15, 54:23, 55:12, 55:13, 56:14, 57:2, 57:24, 58:2, 65:20, 65:21, 65:24, 82:11, 82:16, 82:17, 88:23, 89:13, 93:20, 98:17, 103:1 guns [2] - 94:20, 106:5 guy [21] - 24:10, 25:13, 36:12, 46:13, 47:7, 54:16, 59:6, 61:1, 61:5, 65:11, 65:12, 67:16, 71:2, 87:3, 97:16, 98:16, 98:23, 103:4, 103:21, 104:17, 107:8 guys [20] - 8:2, 20:11, 31:10, 37:19, 38:17,	43:24, 45:11, 48:1, 48:21, 62:1, 64:21, 66:13, 86:12, 87:21, 90:11, 94:21, 101:10, 104:2, 106:5, 106:13 H hairs [1] - 82:17 half [6] - 6:2, 85:13, 85:16, 85:23, 86:2, 86:7 hand [15] - 10:5, 37:2, 54:17, 54:20, 54:21, 56:7, 56:8, 56:9, 56:15, 56:17, 57:15, 57:25, 104:22, 110:17 hand's [1] - 57:3 handcuffed [1] - 38:4 handle [1] - 69:23 handled [3] - 66:4, 66:22, 102:2 handling [1] - 8:15 Hands [1] - 52:21 hands [8] - 53:2, 53:3, 53:12, 53:14, 62:9, 65:11, 65:12 harangue [1] - 107:14 hard [4] - 46:3, 48:5, 61:11, 99:14 harm [8] - 51:25, 53:24, 54:6, 54:12, 54:18, 56:24, 58:5, 94:7 head [7] - 37:7, 37:8, 39:8, 39:12, 39:15, 45:22, 46:8 hear [2] - 49:4, 104:24 heard [6] - 31:8, 40:18, 41:16, 44:22, 65:10, 103:19 heavily [2] - 50:20, 59:16 heavy [1] - 62:2 Heimlich [1] - 39:18 help [1] - 43:25 helping [1] - 6:10 hereby [1] - 110:7 hereunder [1] - 110:16 hesitancy [1] - 96:4 hesitant [1] - 95:22 hesitate [1] - 96:8	high [1] - 25:2 high-risk [1] - 25:2 higher [1] - 95:8 himself [12] - 36:7, 37:15, 47:8, 49:22, 52:8, 54:13, 57:9, 59:16, 86:2, 104:20, 104:23 hired [2] - 3:24, 99:5 hiring [1] - 73:1 hit [11] - 30:22, 30:23, 77:9, 77:17, 77:18, 78:21, 79:10, 79:20, 79:21, 83:13, 83:17 hits [1] - 87:19 hitting [4] - 30:24, 78:4, 79:8, 79:21 hold [1] - 65:11 hope [1] - 33:23 hopefully [1] - 70:5 horrible [2] - 98:18, 107:8 hour [4] - 27:17, 27:19, 28:1, 29:23 hours [9] - 5:17, 6:2, 6:7, 25:24, 50:21, 60:1, 105:15 human [2] - 98:8, 98:12 humans [1] - 98:11 hurry [2] - 43:14, 43:17 hurt [4] - 9:11, 83:6, 83:7, 97:17 hypothetically [1] - 100:9 I idea [1] - 21:19 identical [1] - 58:15 identification [2] - 55:22, 55:23 identified [1] - 2:18 IIIA [1] - 27:13 illegal [2] - 102:10, 102:13 Illinois [1] - 4:4 imagine [2] - 58:1, 105:25 immediate [3] - 30:15, 36:24, 78:13 immediately [8] - 12:24, 47:4, 47:11,	47:14, 48:4, 53:2, 77:16, 78:16 imminent [2] - 52:7, 54:12 impact [2] - 61:7, 93:25 implicates [1] - 40:8 implied [1] - 56:21 important [1] - 89:24 impose [1] - 12:13 improper [1] - 42:7 improperly [1] - 42:11 in-squad [1] - 26:12 inadequate [1] - 7:16 inappropriate [3] - 15:9, 15:20, 15:22 incapacitated [7] - 36:15, 37:4, 45:18, 45:25, 46:1, 46:14, 67:11 incident [21] - 19:5, 28:25, 47:2, 68:7, 68:17, 70:10, 73:12, 73:16, 74:14, 75:23, 80:2, 83:2, 83:3, 83:24, 84:2, 84:13, 85:2, 86:17, 96:16, 97:1, 108:15 incidents [20] - 43:4, 63:25, 64:2, 69:17, 70:17, 73:10, 80:24, 81:3, 82:23, 83:9, 83:18, 85:7, 85:15, 85:19, 85:25, 86:5, 86:9, 86:25, 88:13, 100:23 include [1] - 25:22 included [2] - 16:21, 49:22 includes [1] - 38:20 including [1] - 72:22 inclusion [1] - 105:3 inconsistent [4] - 56:3, 56:5, 77:21, 78:9 incorporate [1] - 52:4 incorrect [1] -	17:20 incorrectly [1] - 48:22 increased [1] - 7:24 indeed [1] - 46:14 independent [1] - 3:6 indicate [2] - 57:14, 74:1 indicated [1] - 51:2 indication [1] - 87:20 indirectly [2] - 11:19, 110:15 individual [4] - 50:17, 86:25, 97:6, 99:21 influence [3] - 60:10, 60:20, 61:10 inform [1] - 12:8 Information [1] - 88:9 information [8] - 17:22, 17:25, 52:14, 69:12, 73:25, 89:22, 90:7, 90:13 infrared [2] - 51:3, 52:23 initiated [1] - 64:19 injured [2] - 83:7, 109:1 injuries [3] - 35:24, 42:11, 84:8 injury [1] - 52:8 inquiry [1] - 32:18 inservice [1] - 48:2 inside [1] - 87:23 instance [5] - 22:10, 25:2, 56:13, 77:23, 100:20 instead [4] - 18:18, 18:24, 19:1, 65:11 institutional [1] - 12:4 instructed [1] - 14:15 instructions [1] - 5:23 instructors [1] - 21:14 instructs [1] - 23:16 insubordinate [2] - 74:25 insubordination [2] - 74:6, 74:24
---	--	---	--	--

<p>intent [1] - 74:21</p> <p>intentionally [1] - 39:1</p> <p>interaction [1] - 29:6</p> <p>interest [3] - 11:25, 13:20, 17:18</p> <p>interested [1] - 110:14</p> <p>interview [23] - 3:13, 16:22, 16:23, 17:3, 17:6, 17:7, 71:22, 71:24, 72:2, 72:3, 73:6, 76:16, 78:13, 80:18, 81:24, 85:4, 85:6, 88:6, 88:10, 88:11, 88:22, 90:1, 107:20</p> <p>interviewed [3] - 28:4, 68:25, 80:7</p> <p>interviewer [1] - 88:24</p> <p>interviews [5] - 16:20, 17:1, 17:22, 92:23, 96:11</p> <p>intoxicated [1] - 59:17</p> <p>investigate [1] - 69:19</p> <p>INVESTIGATION [1] - 1:5</p> <p>investigation [7] - 29:4, 35:14, 59:13, 69:10, 74:17, 82:10, 89:2</p> <p>investigations [1] - 15:1</p> <p>investigative [1] - 69:18</p> <p>Investigative [1] - 69:21</p> <p>Investigator [3] - 2:10, 2:11, 2:11</p> <p>investigator [1] - 3:7</p> <p>involve [1] - 13:18</p> <p>involved [33] - 11:10, 13:21, 36:7, 40:14, 43:2, 43:4, 47:3, 47:13, 60:25, 67:20, 69:22, 70:6, 70:13, 70:17, 70:20, 83:18, 83:24, 83:25, 84:4, 84:8, 84:12, 84:17, 84:23, 85:1, 85:18, 86:11, 86:13, 87:1, 87:7, 89:25, 93:10, 93:24, 97:3</p> <p>involvement [1] -</p>	<p>11:20</p> <p>involving [2] - 73:12, 90:17</p> <p>Iowa [1] - 4:10</p> <p>issue [17] - 5:6, 19:6, 29:3, 31:21, 33:20, 33:24, 42:1, 44:2, 48:7, 73:15, 73:17, 73:18, 73:19, 73:20, 76:12, 85:11, 87:15</p> <p>issued [2] - 23:22, 62:23</p> <p>issues [5] - 31:2, 31:5, 63:14, 66:3, 68:25</p> <p>issuing [1] - 100:13</p> <p>itself [1] - 51:1</p> <p>J</p> <p>Jacobs [4] - 1:14, 3:3, 3:9, 48:13</p> <p>JACOBS [23] - 2:2, 2:3, 7:2, 9:19, 16:14, 44:3, 44:9, 45:12, 45:20, 61:20, 70:15, 71:3, 71:7, 71:12, 90:25, 91:10, 91:16, 91:22, 106:6, 106:10, 106:17, 107:4, 107:17</p> <p>jaded [1] - 99:5</p> <p>January [10] - 5:15, 5:25, 82:25, 84:5, 84:13, 84:21, 85:2, 86:15, 86:18, 86:20</p> <p>Jay [2] - 18:11, 30:9</p> <p>jaywalking [1] - 100:13</p> <p>job [6] - 7:22, 97:15, 103:10, 103:13, 103:21, 105:18</p> <p>jobs [1] - 99:10</p> <p>Joe [2] - 95:2, 103:18</p> <p>jokingly [1] - 94:20</p> <p>Joseph [2] - 103:3, 105:6</p> <p>JOSEPH [1] - 1:5</p> <p>judge [2] - 100:16, 100:18</p> <p>July [5] - 17:5, 48:25, 51:18, 72:1, 72:19</p> <p>jump [1] - 98:13</p> <p>June [11] - 5:16,</p>	<p>6:1, 14:5, 15:5, 51:17, 83:10, 83:24, 84:1, 84:2, 85:1, 86:15</p> <p>jurisdiction [1] - 97:2</p> <p>justification [1] - 65:4</p> <p>justified [7] - 47:19, 57:10, 58:6, 58:9, 58:20, 94:4, 100:6</p> <p>K</p> <p>keep [7] - 10:12, 13:2, 16:10, 62:9, 62:23, 63:7, 100:8</p> <p>kept [4] - 30:24, 77:18, 79:21, 104:4</p> <p>kid [2] - 103:20, 105:22</p> <p>kid's [1] - 102:3</p> <p>kidding [1] - 103:11</p> <p>Kilbourn [1] - 2:6</p> <p>killed [1] - 108:25</p> <p>Kimberley [1] - 74:15</p> <p>kind [11] - 7:2, 10:14, 31:1, 31:13, 32:25, 44:16, 49:11, 66:21, 68:23, 73:9, 107:25</p> <p>kit [1] - 35:7</p> <p>kits [1] - 50:17</p> <p>knife [1] - 55:11</p> <p>KNIGHT [3] - 2:6, 61:17, 79:24</p> <p>Knight [1] - 3:16</p> <p>Knight's [1] - 62:7</p> <p>knowing [4] - 60:5, 61:5, 74:11, 77:9</p> <p>knowledge [2] - 39:3, 85:2</p> <p>known [5] - 55:4, 61:12, 63:11, 65:19, 79:5</p> <p>knows [3] - 42:16, 87:25, 105:8</p> <p>L</p> <p>lack [1] - 69:8</p> <p>Lane [2] - 1:15, 2:3</p> <p>language [2] - 27:24, 28:8</p> <p>laptop [1] - 26:12</p>	<p>largest [1] - 97:12</p> <p>last [10] - 4:8, 7:25, 30:3, 50:10, 50:18, 81:9, 85:17, 86:12, 92:3, 104:6</p> <p>Law [1] - 3:4</p> <p>LAW [1] - 2:5</p> <p>law [16] - 3:8, 3:23, 4:2, 6:8, 17:18, 38:25, 41:3, 42:4, 42:24, 44:18, 51:21, 93:16, 97:25, 98:7, 102:11</p> <p>lawful [3] - 72:10, 72:21, 102:12</p> <p>lawsuit [1] - 7:6</p> <p>lawsuits [1] - 7:14</p> <p>learning [1] - 66:1</p> <p>least [9] - 5:15, 21:10, 23:23, 45:15, 63:18, 64:1, 86:15, 96:11, 106:11</p> <p>leather [2] - 77:2, 87:22</p> <p>Leave [1] - 102:18</p> <p>leave [3] - 14:13, 15:16, 102:19</p> <p>leaves [1] - 23:4</p> <p>leaving [2] - 30:1, 30:5</p> <p>left [2] - 19:24, 41:13</p> <p>legal [12] - 10:18, 11:20, 12:3, 12:10, 12:13, 12:15, 41:25, 51:20, 58:20, 59:25, 99:23, 99:24</p> <p>legality [1] - 95:5</p> <p>legally [5] - 100:6, 100:23, 100:25, 101:5</p> <p>legit [1] - 20:13</p> <p>legitimate [4] - 42:4, 42:24, 44:18, 96:9</p> <p>less [2] - 58:1, 64:14</p> <p>lethal [1] - 5:23</p> <p>letter [4] - 29:11, 90:23, 90:24, 100:17</p> <p>letters [2] - 70:24, 70:25</p> <p>letting [2] - 13:1, 15:24</p> <p>level [3] - 9:12, 42:13, 95:8</p> <p>liable [1] - 7:10</p>	<p>libel [2] - 14:7, 15:18</p> <p>Lieutenant [4] - 8:7, 49:5, 69:3, 69:4</p> <p>lieutenant [2] - 30:17, 48:23</p> <p>life [3] - 53:22, 102:3, 102:4</p> <p>lights [16] - 18:24, 20:2, 20:8, 20:22, 20:24, 21:9, 23:3, 23:13, 27:15, 27:18, 28:14, 28:17, 28:18, 33:8, 43:25</p> <p>likely [1] - 96:17</p> <p>likewise [1] - 55:20</p> <p>limit [1] - 59:25</p> <p>liquor [2] - 60:21, 61:11</p> <p>list [4] - 84:9, 84:18, 86:6, 87:12</p> <p>listed [1] - 83:19</p> <p>listened [1] - 72:3</p> <p>literal [1] - 27:23</p> <p>loaded [1] - 104:16</p> <p>located [1] - 92:7</p> <p>look [20] - 10:7, 14:23, 38:2, 40:10, 40:11, 41:22, 59:3, 59:7, 59:8, 65:25, 66:18, 67:1, 83:14, 85:8, 91:6, 93:6, 97:5, 97:11, 107:11</p> <p>looked [7] - 19:6, 19:11, 20:15, 20:16, 24:2, 42:20, 79:23</p> <p>looking [4] - 5:24, 19:24, 22:19, 63:23</p> <p>looks [4] - 20:1, 59:4, 59:6, 60:17</p> <p>losing [1] - 99:13</p> <p>lower [2] - 84:15, 99:16</p> <p>lunch [1] - 13:5</p> <p>luxury [1] - 66:13</p> <p>M</p> <p>magazine [4] - 62:25, 64:3, 104:14, 104:15</p> <p>main [1] - 42:3</p> <p>maintain [1] - 14:16</p> <p>MAIT [1] - 69:20</p> <p>major [1] - 81:18</p> <p>mall [5] - 82:15,</p>
--	---	---	---	---

BROWN & JONES REPORTING, INC.

414-224-9533

82:16, 104:15, 104:17, 104:18 man [1] - 66:8 manager [1] - 4:9 mandatory [1] - 68:12 maneuver [1] - 39:19 manipulated [2] - 41:11, 42:10 manner [1] - 72:11 marijuana [8] - 59:20, 59:22, 60:20, 61:11, 61:21, 61:25, 62:3, 62:4 marked [1] - 10:2 Massachusetts [1] - 21:13 matter [9] - 3:10, 10:23, 27:22, 37:17, 42:19, 93:16, 102:23, 103:3, 108:17 mayor [2] - 73:3, 102:12 ME [1] - 45:7 ME's [1] - 45:4 mean [24] - 23:18, 36:15, 37:6, 43:15, 45:3, 45:17, 47:17, 48:10, 50:11, 56:23, 58:11, 63:15, 64:13, 75:18, 82:17, 92:24, 96:12, 97:4, 99:18, 100:8, 100:14, 106:3, 106:19 meaning [1] - 45:7 means [3] - 26:22, 43:24, 102:25 meant [3] - 31:14, 46:7, 68:12 mechanical [1] - 31:2 medal [1] - 108:7 Media [2] - 14:1, 14:13 media [17] - 11:5, 11:9, 11:17, 14:15, 16:2, 16:12, 16:14, 16:16, 16:17, 16:20, 16:21, 16:25, 17:1, 17:14, 17:18, 17:23, 90:18 medical [8] - 24:11, 33:21, 42:2, 45:7, 47:1, 47:5,	59:19, 60:3 meeting [2] - 10:3, 102:7 meetings [1] - 102:18 member [2] - 6:19, 90:21 members [2] - 11:5, 28:4 membership [1] - 12:5 memoranda [1] - 5:3 memorandum [1] - 82:20 MENSAH [1] - 1:5 Mensah [92] - 5:8, 10:17, 10:24, 13:21, 14:4, 15:4, 16:19, 18:20, 21:3, 22:9, 22:22, 23:24, 28:21, 28:24, 29:17, 30:11, 30:16, 30:21, 31:12, 34:21, 35:1, 35:15, 36:2, 37:1, 41:4, 41:19, 43:1, 45:13, 45:25, 47:13, 48:7, 48:25, 49:25, 51:24, 52:15, 52:19, 52:25, 53:11, 53:18, 54:2, 54:20, 55:1, 55:12, 55:19, 55:21, 55:25, 56:3, 56:7, 56:9, 57:1, 58:3, 60:6, 60:15, 60:24, 61:14, 61:24, 62:3, 62:17, 64:22, 65:6, 65:16, 67:7, 68:5, 70:17, 71:23, 72:1, 72:17, 73:6, 73:23, 74:4, 78:15, 80:10, 81:21, 85:5, 86:18, 87:2, 87:8, 90:4, 94:16, 95:2, 96:1, 96:13, 96:22, 103:4, 103:18, 105:6, 105:11, 106:2, 106:19, 107:8, 107:11, 107:19 Mensah's [7] - 18:11, 44:6, 53:10, 55:14, 62:22, 93:10, 106:7 mentioned [3] - 8:7, 50:5, 88:22 Mequon [2] - 1:15, 2:4 mere [1] - 90:4 mic [1] - 78:17 Michael [1] - 3:11	MICHELLE [1] - 2:3 Michelle [1] - 3:9 microphone [2] - 26:13, 105:12 might [17] - 9:11, 13:20, 20:9, 23:1, 25:7, 28:8, 49:9, 59:2, 59:11, 65:9, 65:17, 65:20, 79:5, 95:22, 96:4, 96:7, 96:8 Mike [2] - 2:11, 20:14 miles [4] - 27:16, 27:19, 27:25, 29:22 Mills [3] - 36:22, 41:12, 49:23 MILWAUKEE [1] - 110:2 Milwaukee [8] - 2:7, 22:17, 69:21, 69:22, 70:1, 78:12, 104:13, 110:17 mind [6] - 24:6, 46:16, 60:8, 66:17, 66:22, 76:1 minor [1] - 100:17 minute [5] - 34:21, 34:23, 35:1, 36:19, 71:17 minutes [7] - 35:7, 35:10, 35:12, 35:15, 36:2, 40:6, 101:21 mirrors [1] - 21:7 misdemeanor [1] - 38:25 missed [1] - 107:17 Missouri [2] - 4:6, 4:7 misspeak [1] - 68:11 mistake [1] - 98:14 mistakes [1] - 98:12 mode [1] - 48:5 moment [2] - 48:3, 92:13 moments [1] - 46:2 month [3] - 70:2, 70:3, 70:5 months [3] - 4:8, 5:21, 8:4 morning [2] - 22:5, 24:5 most [7] - 19:16, 51:4, 59:7, 81:18, 98:2, 98:23, 98:25	motion [1] - 66:16 motivated [2] - 73:24, 74:1 Motley [1] - 74:15 motorist [1] - 29:14 mouth [1] - 16:10 move [8] - 8:17, 10:16, 13:24, 16:16, 33:20, 36:3, 53:2, 71:20 moved [3] - 41:14, 42:22, 53:3 movement [2] - 23:9, 54:23 movements [2] - 51:4, 60:11 moves [1] - 35:15 moving [3] - 18:10, 24:10, 36:16 MR [80] - 2:2, 3:2, 3:21, 7:4, 7:13, 7:19, 8:6, 9:1, 9:4, 9:14, 9:17, 9:18, 10:15, 16:15, 20:14, 20:16, 21:2, 21:23, 22:8, 22:11, 24:22, 24:23, 25:16, 25:20, 26:3, 26:4, 26:6, 32:20, 32:22, 33:2, 33:6, 33:14, 33:19, 34:13, 44:1, 45:7, 46:20, 48:16, 49:14, 49:16, 49:20, 50:5, 50:19, 50:23, 50:24, 51:8, 57:12, 58:7, 58:8, 61:17, 62:5, 64:25, 65:5, 66:7, 66:11, 67:3, 67:4, 67:25, 70:12, 71:13, 71:19, 76:11, 76:14, 79:24, 80:1, 80:6, 87:14, 87:16, 87:18, 87:19, 88:4, 88:5, 92:2, 101:17, 101:19, 105:24, 107:23, 107:24, 108:2, 109:6 MS [21] - 2:3, 7:2, 9:19, 16:14, 44:3, 44:9, 45:12, 45:20, 61:20, 70:15, 71:3, 71:7, 71:12, 90:25, 91:10, 91:16, 106:6, 106:10, 106:17, 107:4, 107:17 MUELLER [26] - 7:19, 8:6, 9:1, 9:4, 9:14, 9:17, 24:23, 25:16, 25:20, 26:3,	32:22, 33:2, 33:6, 33:14, 49:16, 50:5, 50:19, 50:23, 65:5, 66:7, 67:3, 87:16, 87:19, 88:4, 107:24, 108:2 Mueller [2] - 2:10, 3:11 multiple [5] - 39:7, 39:15, 64:9, 86:8, 100:20 Municipal [2] - 11:24, 13:17 municipal [1] - 21:13 mural [1] - 105:5 murder [1] - 105:15 murdered [1] - 105:5 murderer [1] - 105:13 murdering [1] - 108:13 must [6] - 21:10, 24:17, 27:17, 28:17, 39:2, 104:21
N				
name [1] - 84:11 names [2] - 13:7, 87:11 nationally [1] - 42:1 nationwide [3] - 95:4, 97:18, 98:15 nature [1] - 94:15 near [2] - 19:19, 37:7 necessarily [1] - 45:17 necessary [8] - 35:25, 39:4, 52:1, 52:7, 54:25, 55:2, 62:20, 87:10 need [2] - 10:7, 43:25 needed [4] - 28:11, 77:6, 77:7 NEUREUTHER [6] - 57:12, 58:7, 67:4, 70:12, 101:19, 105:24 Neureuther [2] - 2:11, 3:12 never [12] - 7:5, 7:17, 13:14, 23:24, 43:21, 72:4, 76:6, 76:9, 80:10, 88:3 new [1] - 107:1 Newman [3] - 64:9, 64:11				

news [1] - 22:1 next [13] - 9:23, 10:6, 10:16, 13:24, 67:22, 68:15, 71:20, 76:15, 80:18, 88:7, 103:1, 105:13 nice [1] - 103:21 night [1] - 20:20 no-win [1] - 102:16 nobody [1] - 17:10 nonchalant [1] - 98:24 none [2] - 64:2, 103:23 None [1] - 2:18 nonfatally [1] - 83:11 nonlaw [1] - 47:17 nonshooting [1] - 99:22 norm [1] - 97:5 normal [5] - 59:5, 81:17, 89:3, 89:6, 89:7 north [1] - 103:16 Notary [3] - 1:13, 110:6, 110:22 note [4] - 5:10, 5:21, 15:2, 27:9 notes [1] - 39:2 nothing [8] - 18:6, 19:2, 24:15, 37:9, 45:1, 45:6, 63:18, 89:16 notice [1] - 62:4 noticed [1] - 62:4 notifying [1] - 34:22 nuances [1] - 59:11 number [3] - 62:21, 86:13, 97:6 Numeral [2] - 26:10, 27:13	observation [3] - 8:11, 10:1, 61:18 obviously [16] - 6:8, 12:5, 23:19, 24:4, 30:10, 38:20, 48:13, 55:24, 69:9, 81:14, 88:25, 92:9, 92:14, 92:15, 97:5, 103:18 Obviously [1] - 59:19 occasion [1] - 98:12 occasions [2] - 53:13, 100:20 October [1] - 110:24 odor [2] - 61:20, 62:3 OF [4] - 1:5, 3:1, 110:1, 110:2 offhand [3] - 69:6, 70:21, 71:6 office [8] - 6:3, 24:16, 45:5, 89:3, 89:23, 100:3, 100:4, 110:17 officer [111] - 4:4, 6:24, 8:15, 8:16, 8:20, 10:4, 10:7, 11:10, 11:19, 12:2, 12:4, 12:9, 13:25, 17:2, 18:14, 18:16, 19:18, 20:21, 21:7, 22:1, 23:1, 23:25, 24:7, 26:14, 26:17, 27:3, 29:12, 29:16, 29:17, 30:17, 32:2, 35:23, 37:3, 37:10, 39:1, 39:2, 39:7, 40:14, 42:15, 46:24, 47:18, 50:14, 52:5, 53:20, 55:9, 56:11, 56:12, 56:14, 56:17, 57:8, 57:16, 58:16, 58:17, 58:18, 58:23, 59:2, 60:17, 60:19, 61:8, 61:9, 61:12, 62:10, 64:11, 64:13, 68:24, 71:15, 72:11, 72:13, 73:11, 75:15, 75:22, 75:24, 76:4, 77:15, 83:11, 84:10, 84:23, 86:18, 86:25, 87:7, 87:19, 87:25, 88:20, 88:23, 89:1, 90:18, 91:17, 92:8, 92:19, 93:1, 93:8, 93:10, 93:18, 93:23, 94:11,	94:12, 96:21, 97:3, 97:9, 98:24, 99:23, 99:24, 100:5, 100:10, 100:16, 100:18, 100:22, 107:13, 108:18, 108:23 OFFICER [1] - 1:5 Officer [66] - 5:7, 10:17, 10:23, 13:21, 14:4, 15:4, 16:19, 18:11, 18:20, 22:9, 22:21, 23:23, 28:21, 28:24, 30:11, 30:16, 30:21, 34:21, 35:1, 35:15, 36:2, 37:1, 41:4, 51:24, 52:15, 52:18, 52:25, 53:9, 54:2, 55:1, 55:14, 55:19, 55:21, 55:25, 56:3, 57:1, 60:6, 60:15, 61:14, 62:16, 62:22, 64:9, 64:11, 65:6, 67:7, 68:5, 70:16, 71:23, 72:1, 72:17, 73:6, 73:23, 74:4, 78:15, 80:10, 81:21, 85:5, 87:2, 87:8, 90:4, 94:16, 95:25, 96:13, 96:22, 106:7, 107:19 officer's [4] - 19:14, 37:14, 57:19, 67:8 officer-involved [1] - 11:10 Officers [1] - 36:21 officers [79] - 4:16, 4:21, 5:1, 6:4, 7:21, 9:22, 12:21, 14:14, 14:18, 14:21, 19:22, 21:15, 23:16, 24:25, 29:5, 34:8, 34:9, 35:6, 38:7, 39:17, 40:1, 42:10, 42:19, 44:10, 44:16, 45:24, 47:4, 47:6, 47:10, 47:14, 49:2, 56:21, 57:23, 58:11, 58:24, 59:10, 61:3, 61:4, 63:6, 63:9, 67:13, 68:18, 72:9, 72:22, 73:1, 83:12, 83:16, 83:23, 84:3, 84:6, 84:8, 84:14, 84:16, 84:20, 84:21, 85:10, 85:13,	85:17, 85:24, 86:3, 86:8, 86:16, 86:19, 86:21, 86:23, 87:12, 89:20, 95:20, 95:25, 96:2, 96:3, 96:12, 97:13, 98:14, 99:4, 99:25, 105:11, 108:11, 109:1 officers' [1] - 106:18 official [5] - 10:25, 17:3, 28:23, 90:3, 101:4 often [1] - 48:19 Oftentimes [1] - 21:25 OJT [1] - 8:8 old [5] - 4:3, 104:9, 106:23, 106:25, 107:1 oldest [1] - 106:24 on-the-job [1] - 7:22 once [7] - 29:16, 44:19, 64:10, 77:9, 79:11, 80:15, 89:10 oncoming [1] - 21:24 one [72] - 7:1, 8:10, 10:6, 11:16, 13:24, 16:7, 16:18, 17:15, 20:14, 34:6, 34:7, 38:7, 40:1, 40:2, 40:3, 42:3, 43:4, 44:15, 47:12, 47:13, 49:7, 49:24, 50:14, 51:9, 51:16, 58:16, 58:22, 60:25, 62:23, 63:12, 63:14, 64:23, 65:25, 66:9, 68:25, 73:8, 73:11, 78:10, 80:23, 81:1, 81:4, 83:9, 83:12, 84:2, 84:10, 84:11, 84:20, 84:21, 85:4, 86:10, 86:16, 86:19, 87:1, 87:3, 87:8, 88:3, 88:12, 88:15, 88:25, 94:25, 96:6, 96:22, 97:3, 97:9, 99:5, 99:7, 103:25, 105:6, 106:24, 107:3, 108:15, 108:16 one's [1] - 12:20 ones [3] - 84:4, 86:14, 87:5 online [2] - 14:17, 15:9	open [1] - 44:10 opened [1] - 44:20 Operating [1] - 26:8 operation [1] - 76:17 opinion [7] - 32:14, 57:11, 65:8, 90:9, 101:22, 101:24, 102:1 opportunity [2] - 81:23, 99:20 opposed [2] - 63:12, 63:13 oppressive [1] - 14:20 orally [1] - 55:25 order [6] - 24:14, 72:14, 75:8, 102:6, 102:10, 102:14 ordered [1] - 102:8 orders [4] - 5:3, 72:10, 75:10, 102:12 ordinance [6] - 19:3, 23:20, 23:23, 24:8, 32:12, 82:8 organizations [2] - 14:12, 15:16 originate [1] - 43:20 otherwise [2] - 42:6, 75:14 outlet [1] - 17:15 outside [3] - 38:14, 59:23, 67:18 overall [1] - 59:12 overbearing [1] - 14:20 overseeing [1] - 8:16 own [11] - 8:19, 8:24, 35:16, 66:22, 69:11, 69:19, 69:23, 81:16, 85:12, 95:12, 101:23
O O'Day [5] - 78:11, 78:15, 78:20, 80:8, 80:9 Oak [1] - 69:25 Oaks [2] - 1:15, 2:3 obey [1] - 72:9 objective [2] - 57:2, 96:25 objectively [2] - 52:9, 52:11 obligation [2] - 37:9, 37:14	observation [3] - 8:11, 10:1, 61:18 obviously [16] - 6:8, 12:5, 23:19, 24:4, 30:10, 38:20, 48:13, 55:24, 69:9, 81:14, 88:25, 92:9, 92:14, 92:15, 97:5, 103:18 Obviously [1] - 59:19 occasion [1] - 98:12 occasions [2] - 53:13, 100:20 October [1] - 110:24 odor [2] - 61:20, 62:3 OF [4] - 1:5, 3:1, 110:1, 110:2 offhand [3] - 69:6, 70:21, 71:6 office [8] - 6:3, 24:16, 45:5, 89:3, 89:23, 100:3, 100:4, 110:17 officer [111] - 4:4, 6:24, 8:15, 8:16, 8:20, 10:4, 10:7, 11:10, 11:19, 12:2, 12:4, 12:9, 13:25, 17:2, 18:14, 18:16, 19:18, 20:21, 21:7, 22:1, 23:1, 23:25, 24:7, 26:14, 26:17, 27:3, 29:12, 29:16, 29:17, 30:17, 32:2, 35:23, 37:3, 37:10, 39:1, 39:2, 39:7, 40:14, 42:15, 46:24, 47:18, 50:14, 52:5, 53:20, 55:9, 56:11, 56:12, 56:14, 56:17, 57:8, 57:16, 58:16, 58:17, 58:18, 58:23, 59:2, 60:17, 60:19, 61:8, 61:9, 61:12, 62:10, 64:11, 64:13, 68:24, 71:15, 72:11, 72:13, 73:11, 75:15, 75:22, 75:24, 76:4, 77:15, 83:11, 84:10, 84:23, 86:18, 86:25, 87:7, 87:19, 87:25, 88:20, 88:23, 89:1, 90:18, 91:17, 92:8, 92:19, 93:1, 93:8, 93:10, 93:18, 93:23, 94:11,	94:12, 96:21, 97:3, 97:9, 98:24, 99:23, 99:24, 100:5, 100:10, 100:16, 100:18, 100:22, 107:13, 108:18, 108:23 OFFICER [1] - 1:5 Officer [66] - 5:7, 10:17, 10:23, 13:21, 14:4, 15:4, 16:19, 18:11, 18:20, 22:9, 22:21, 23:23, 28:21, 28:24, 30:11, 30:16, 30:21, 34:21, 35:1, 35:15, 36:2, 37:1, 41:4, 51:24, 52:15, 52:18, 52:25, 53:9, 54:2, 55:1, 55:14, 55:19, 55:21, 55:25, 56:3, 57:1, 60:6, 60:15, 61:14, 62:16, 62:22, 64:9, 64:11, 65:6, 67:7, 68:5, 70:16, 71:23, 72:1, 72:17, 73:6, 73:23, 74:4, 78:15, 80:10, 81:21, 85:5, 87:2, 87:8, 90:4, 94:16, 95:25, 96:13, 96:22, 106:7, 107:19 officer's [4] - 19:14, 37:14, 57:19, 67:8 officer-involved [1] - 11:10 Officers [1] - 36:21 officers [79] - 4:16, 4:21, 5:1, 6:4, 7:21, 9:22, 12:21, 14:14, 14:18, 14:21, 19:22, 21:15, 23:16, 24:25, 29:5, 34:8, 34:9, 35:6, 38:7, 39:17, 40:1, 42:10, 42:19, 44:10, 44:16, 45:24, 47:4, 47:6, 47:10, 47:14, 49:2, 56:21, 57:23, 58:11, 58:24, 59:10, 61:3, 61:4, 63:6, 63:9, 67:13, 68:18, 72:9, 72:22, 73:1, 83:12, 83:16, 83:23, 84:3, 84:6, 84:8, 84:14, 84:16, 84:20, 84:21, 85:10, 85:13,	85:17, 85:24, 86:3, 86:8, 86:16, 86:19, 86:21, 86:23, 87:12, 89:20, 95:20, 95:25, 96:2, 96:3, 96:12, 97:13, 98:14, 99:4, 99:25, 105:11, 108:11, 109:1 officers' [1] - 106:18 official [5] - 10:25, 17:3, 28:23, 90:3, 101:4 often [1] - 48:19 Oftentimes [1] - 21:25 OJT [1] - 8:8 old [5] - 4:3, 104:9, 106:23, 106:25, 107:1 oldest [1] - 106:24 on-the-job [1] - 7:22 once [7] - 29:16, 44:19, 64:10, 77:9, 79:11, 80:15, 89:10 oncoming [1] - 21:24 one [72] - 7:1, 8:10, 10:6, 11:16, 13:24, 16:7, 16:18, 17:15, 20:14, 34:6, 34:7, 38:7, 40:1, 40:2, 40:3, 42:3, 43:4, 44:15, 47:12, 47:13, 49:7, 49:24, 50:14, 51:9, 51:16, 58:16, 58:22, 60:25, 62:23, 63:12, 63:14, 64:23, 65:25, 66:9, 68:25, 73:8, 73:11, 78:10, 80:23, 81:1, 81:4, 83:9, 83:12, 84:2, 84:10, 84:11, 84:20, 84:21, 85:4, 86:10, 86:16, 86:19, 87:1, 87:3, 87:8, 88:3, 88:12, 88:15, 88:25, 94:25, 96:6, 96:22, 97:3, 97:9, 99:5, 99:7, 103:25, 105:6, 106:24, 107:3, 108:15, 108:16 one's [1] - 12:20 ones [3] - 84:4, 86:14, 87:5 online [2] - 14:17, 15:9	open [1] - 44:10 opened [1] - 44:20 Operating [1] - 26:8 operation [1] - 76:17 opinion [7] - 32:14, 57:11, 65:8, 90:9, 101:22, 101:24, 102:1 opportunity [2] - 81:23, 99:20 opposed [2] - 63:12, 63:13 oppressive [1] - 14:20 orally [1] - 55:25 order [6] - 24:14, 72:14, 75:8, 102:6, 102:10, 102:14 ordered [1] - 102:8 orders [4] - 5:3, 72:10, 75:10, 102:12 ordinance [6] - 19:3, 23:20, 23:23, 24:8, 32:12, 82:8 organizations [2] - 14:12, 15:16 originate [1] - 43:20 otherwise [2] - 42:6, 75:14 outlet [1] - 17:15 outside [3] - 38:14, 59:23, 67:18 overall [1] - 59:12 overbearing [1] - 14:20 overseeing [1] - 8:16 own [11] - 8:19, 8:24, 35:16, 66:22, 69:11, 69:19, 69:23, 81:16, 85:12, 95:12, 101:23
P p.m [5] - 1:16, 1:17, 14:5, 15:4, 109:8 P219 [1] - 34:16 packs [1] - 39:11 page [8] - 14:6, 26:10, 34:2, 34:3, 34:4, 34:5, 35:21, 88:8 Page [1] - 2:16 pages [2] - 83:15,	observation [3] - 8:11, 10:1, 61:18 obviously [16] - 6:8, 12:5, 23:19, 24:4, 30:10, 38:20, 48:13, 55:24, 69:9, 81:14, 88:25, 92:9, 92:14, 92:15, 97:5, 103:18 Obviously [1] - 59:19 occasion [1] - 98:12 occasions [2] - 53:13, 100:20 October [1] - 110:24 odor [2] - 61:20, 62:3 OF [4] - 1:5, 3:1, 110:1, 110:2 offhand [3] - 69:6, 70:21, 71:6 office [8] - 6:3, 24:16, 45:5, 89:3, 89:23, 100:3, 100:4, 110:17 officer [111] - 4:4, 6:24, 8:15, 8:16, 8:20, 10:4, 10:7, 11:10, 11:19, 12:2, 12:4, 12:9, 13:25, 17:2, 18:14, 18:16, 19:18, 20:21, 21:7, 22:1, 23:1, 23:25, 24:7, 26:14, 26:17, 27:3, 29:12, 29:16, 29:17, 30:17, 32:2, 35:23, 37:3, 37:10, 39:1, 39:2, 39:7, 40:14, 42:15, 46:24, 47:18, 50:14, 52:5, 53:20, 55:9, 56:11, 56:12, 56:14, 56:17, 57:8, 57:16, 58:16, 58:17, 58:18, 58:23, 59:2, 60:17, 60:19, 61:8, 61:9, 61:12, 62:10, 64:11, 64:13, 68:24, 71:15, 72:11, 72:13, 73:11, 75:15, 75:22, 75:24, 76:4, 77:15, 83:11, 84:10, 84:23, 86:18, 86:25, 87:7, 87:19, 87:25, 88:20, 88:23, 89:1, 90:18, 91:17, 92:8, 92:19, 93:1, 93:8, 93:10, 93:18, 93:23, 94:11,	94:12, 96:21, 97:3, 97:9, 98:24, 99:23, 99:24, 100:5, 100:10, 100:16, 100:18, 100:22, 107:13, 108:18, 108:23 OFFICER [1] - 1:5 Officer [66] - 5:7, 10:17, 10:23, 13:21, 14:4, 15:4, 16:19, 18:11, 18:20, 22:9, 22:21, 23:23, 28:21, 28:24, 30:11, 30:16, 30:21, 34:21, 35:1, 35:15, 36:2, 37:1, 41:4, 51:24, 52:15, 52:18, 52:25, 53:9, 54:2, 55:1, 55:14, 55:19, 55:21, 55:25, 56:3, 57:1, 60:6, 60:15, 61:14, 62:16, 62:22, 64:9, 64:11, 65:6, 67:7, 68:5, 70:16, 71:23, 72:1, 72:17, 73:6, 73:23, 74:4, 78:15, 80:10, 81:21, 85:5, 87:2, 87:8, 90:4, 94:16, 95:25, 96:13, 96:22, 106:7, 107:19 officer's [4] - 19:14, 37:14, 57:19, 67:8 officer-involved [1] - 11:10 Officers [1] - 36:21 officers [79] - 4:16, 4:21, 5:1, 6:4, 7:21, 9:22, 12:21, 14:14, 14:18, 14:21, 19:22, 21:15, 23:16, 24:25, 29:5, 34:8, 34:9, 35:6, 38:7, 39:17, 40:1, 42:10, 42:19, 44:10, 44:16, 45:24, 47:4, 47:6, 47:10, 47:14, 49:2, 56:21, 57:23, 58:11, 58:24, 59:10, 61:3, 61:4, 63:6, 63:9, 67:13, 68:18, 72:9, 72:22, 73:1, 83:12, 83:16, 83:23, 84:3, 84:6, 84:8, 84:14, 84:16, 84:20, 84:21, 85:10, 85:13,	85:17, 85:24, 86:3, 86:8, 86:16, 86:19, 86:21, 86:23, 87:12, 89:20, 95:20, 95:25, 96:2, 96:3, 96:12, 97:13, 98:14, 99:4, 99:25, 105:11, 108:11, 109:1 officers' [1] - 106:18 official [5] - 10:25, 17:3, 28:23, 90:3, 101:4 often [1] - 48:19 Oftentimes [1] - 21:25 OJT [1] - 8:8 old [5] - 4:3, 104:9, 106:23, 106:25, 107:1 oldest [1] - 106:24 on-the-job [1] - 7:22 once [7] - 29:16, 44:19, 64:10, 77:9, 79:11, 80:15, 89:10 oncoming [1] - 21:24 one [72] - 7:1, 8:10, 10:6, 11:16, 13:24, 16:7, 16:18, 17:15, 20:14, 34:6, 34:7, 38:7, 40:1, 40:2, 40:3, 42:3, 43:4, 44:15, 47:12, 47:13, 49:7, 49:24, 50:14, 51:9, 51:16, 58:16, 58:22, 60:25, 62:23, 63:12, 63:14, 64:23, 65:25, 66:9, 68:25, 73:8, 73:11, 78:10, 80:23, 81:1, 81:4, 83:9, 83:12, 84:2, 84:10, 84:11, 84:20, 84:21, 85:4, 86:10, 86:16, 86:19, 87:1, 87:3, 87:8, 88:3, 88:12, 88:15, 88:25, 94:25, 96:6, 96:22, 97:3, 97:9, 99:5, 99:7, 103:25, 105:6, 106:24, 107:3, 108:15, 108:16 one's [1] - 12:20 ones [3] - 84:4, 86:14, 87:5 online [2] - 14:17, 15:9	open [1] - 44:10 opened [1] - 44:20 Operating [1] - 26:8 operation [1] - 76:17 opinion [7] - 32:14, 57:11, 65:8, 90:9, 101:22, 101:24, 102:1 opportunity [2] - 81:23, 99:20 opposed [2] - 63:12, 63:13 oppressive [1] - 14:20 orally [1] - 55:25 order [6] - 24:14, 72:14, 75:8, 102:6, 102:10, 102:14 ordered [1] - 102:8 orders [4] - 5:3, 72:10, 75:10, 102:12 ordinance [6] - 19:3, 23:20, 23:23, 24:8, 32:12, 82:8 organizations [2] - 14:12, 15:16 originate [1] - 43:20 otherwise [2] - 42:6, 75:14 outlet [1] - 17:15 outside

<p>83:19 paid [1] - 102:20 paint [1] - 105:4 panicking [1] - 43:10 paragraph [1] - 27:12 paramedics [6] - 34:25, 35:3, 35:9, 35:12, 38:21, 42:16 park [16] - 20:6, 22:15, 22:18, 22:20, 23:3, 23:4, 23:21, 23:23, 24:9, 25:9, 32:12, 35:4, 36:10, 38:14, 81:14, 82:7 parking [5] - 18:21, 20:20, 22:23, 33:4, 33:10 part [17] - 4:19, 19:4, 23:17, 45:15, 49:16, 50:7, 59:1, 59:13, 62:16, 63:22, 69:17, 69:20, 69:24, 85:21, 88:11, 102:22, 106:11 participate [2] - 12:3, 12:9 participated [1] - 10:18 particular [26] - 4:24, 17:5, 17:13, 18:15, 25:7, 39:21, 46:22, 47:2, 51:1, 51:22, 53:6, 61:2, 65:2, 68:15, 70:23, 76:12, 76:18, 78:1, 83:9, 88:8, 92:12, 92:17, 92:25, 93:7, 97:11, 100:22 particularly [6] - 6:13, 13:17, 18:19, 81:8, 85:6, 89:22 parties [1] - 110:13 partner [2] - 3:8, 82:13 parts [1] - 51:23 pass [2] - 35:7, 35:11 passed [1] - 93:7 passenger [10] - 18:17, 18:25, 19:9, 19:21, 20:17, 20:23, 21:16, 21:24, 52:17, 57:4 past [7] - 12:14, 12:17, 29:1, 85:13, 85:24, 86:3, 104:7 Pat [2] - 3:17,</p>	<p>105:8 PATRICK [1] - 2:6 Patrick [1] - 3:15 patrol [1] - 81:18 pause [1] - 6:16 pay [2] - 12:23, 72:17 paying [2] - 22:2, 103:5 pendency [1] - 72:18 people [43] - 13:3, 13:7, 16:1, 16:5, 22:16, 22:19, 23:2, 24:1, 25:5, 29:13, 31:6, 41:10, 41:14, 70:25, 71:1, 77:5, 81:6, 81:7, 81:10, 81:12, 81:13, 82:19, 88:17, 88:19, 89:25, 94:6, 95:7, 95:14, 95:15, 98:2, 98:8, 98:13, 99:7, 99:8, 99:13, 99:15, 105:4, 105:5, 105:9, 105:12, 106:3, 107:1, 107:10 per [1] - 27:16 perceive [9] - 51:24, 54:3, 54:6, 58:3, 58:4, 58:19, 59:2, 74:19 perceived [1] - 61:12 perceiving [1] - 100:1 percent [1] - 86:10 perception [1] - 57:19 perceptions [1] - 75:25 perfectly [1] - 20:12 perform [2] - 92:11, 93:4 performance [1] - 92:10 performer [1] - 64:15 perhaps [1] - 61:13 period [5] - 8:20, 21:11, 36:19, 50:11, 61:18 periods [2] - 25:23, 36:1 permission [5] - 15:1, 17:2, 17:7, 89:14, 107:19 permitted [1] -</p>	<p>93:17 person [8] - 3:15, 32:17, 36:11, 38:4, 41:5, 47:22, 70:19, 96:22 person's [1] - 61:9 personal [5] - 10:21, 12:1, 101:24, 102:1, 110:10 personally [3] - 42:18, 45:10, 101:21 personnel [1] - 11:13 perspective [2] - 60:4, 65:7 phase [2] - 9:23, 10:5 phases [1] - 9:20 phone [1] - 98:16 phrase [1] - 43:20 physically [3] - 77:3, 79:2, 79:6 pick [1] - 97:13 picking [1] - 30:14 picture [8] - 10:24, 10:25, 11:2, 11:4, 11:7, 11:14, 105:11, 105:14 pictures [5] - 11:9, 11:11, 104:9, 104:11 piece [1] - 34:17 pipe [1] - 48:21 place [6] - 34:19, 41:21, 42:3, 43:12, 51:15, 68:13 plain [1] - 8:21 plan [1] - 40:21 play [1] - 13:10 played [2] - 51:9, 61:22 Playing [2] - 34:12, 51:7 PO [1] - 78:15 pocket [1] - 55:23 podcast [1] - 16:22 point [19] - 8:17, 22:19, 22:21, 30:15, 31:16, 35:5, 36:16, 37:19, 38:6, 44:12, 44:24, 46:4, 46:10, 46:16, 62:7, 62:10, 63:18, 86:10, 100:10 points [2] - 52:5, 76:3 POLICE [1] - 1:4 police [63] - 3:25,</p>	<p>4:4, 4:6, 4:7, 4:11, 4:13, 4:16, 4:21, 5:1, 7:7, 7:11, 11:18, 19:22, 21:14, 22:18, 22:24, 23:22, 28:4, 34:23, 39:16, 43:16, 56:11, 57:15, 57:22, 59:9, 64:13, 72:7, 72:11, 72:16, 72:20, 72:22, 72:25, 73:1, 73:7, 73:11, 73:15, 73:24, 74:19, 75:1, 75:6, 75:11, 75:15, 75:16, 75:24, 76:4, 76:12, 84:6, 89:14, 89:19, 94:11, 96:21, 98:13, 98:24, 99:3, 102:6, 102:12, 102:15, 105:10, 107:13, 108:11, 108:18, 108:23, 109:1 Police [6] - 2:4, 3:5, 3:7, 3:14, 78:12, 93:23 policies [13] - 4:24, 5:2, 48:17, 48:18, 48:19, 49:4, 57:13, 90:6, 91:4, 91:7, 91:16, 91:21, 92:14 Policy [10] - 14:1, 14:13, 33:25, 51:13, 53:8, 71:14, 71:16, 88:7, 89:21, 90:15 policy [42] - 12:7, 14:4, 14:21, 14:23, 16:6, 16:9, 16:12, 16:17, 16:20, 17:15, 18:6, 20:10, 26:8, 27:9, 27:12, 28:1, 32:8, 34:1, 34:19, 35:20, 35:21, 37:5, 38:3, 39:5, 40:8, 46:23, 48:9, 49:7, 49:12, 51:14, 51:21, 56:22, 56:23, 58:20, 68:22, 76:21, 76:23, 91:13, 92:7 policymakers [1] - 17:20 position [2] - 10:21, 13:15 Position [1] - 13:13 positioning [1] - 41:21 possess [1] - 39:3</p>	<p>possession [1] - 41:15 possible [2] - 62:15, 65:14 post [1] - 68:7 post-shooting [1] - 68:7 posted [1] - 15:5 posting [2] - 14:5, 14:24 potential [2] - 83:6, 96:16 potentially [1] - 67:19 pouch [1] - 87:22 practicing [1] - 10:11 pray [4] - 14:8, 15:11, 15:12 precludes [1] - 25:18 preferably [1] - 17:16 prepare [1] - 92:23 present [2] - 28:11, 88:20 preshooting [1] - 79:25 press [3] - 32:5, 89:18, 108:17 pressed [2] - 30:11, 78:17 presses [1] - 27:3 pressure [1] - 39:20 pretty [6] - 12:20, 30:6, 50:20, 71:2, 79:1, 80:9 prevail [1] - 101:12 prevent [1] - 52:7 previously [3] - 51:2, 77:14, 91:9 printout [2] - 5:12, 7:19 prior [10] - 7:1, 26:19, 27:5, 27:6, 30:21, 31:22, 46:22, 65:20, 84:17, 93:24 private [1] - 13:20 pro [1] - 17:18 probation [2] - 8:24, 9:2 probationary [1] - 5:14 problem [8] - 8:23, 24:11, 36:18, 75:7, 81:4, 97:24, 98:3, 98:6 problems [4] - 31:8, 31:20, 64:4,</p>
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414-224-9533

<p>94:14 procedural [1] - 12:7 Procedure [2] - 26:8, 26:11 procedure [4] - 20:11, 21:4, 24:14, 25:17 procedures [3] - 4:24, 5:2, 13:16 proceed [1] - 3:18 proceeding [3] - 3:4, 90:16, 101:12 Proceedings [1] - 109:8 PROCEEDINGS [1] - 3:1 process [1] - 33:13 produced [1] - 24:16 productive [1] - 20:19 profession [1] - 99:13 Professional [2] - 1:12, 110:6 professional [1] - 102:4 professionalism [1] - 14:16 proficient [1] - 8:18 program [2] - 9:16, 64:16 progress [1] - 8:12 prohibit [1] - 10:20 prohibited [1] - 12:2 prohibits [1] - 18:7 promotions [1] - 73:2 prompted [2] - 81:21, 105:7 proper [3] - 5:9, 6:25, 19:9 properly [5] - 7:8, 32:4, 32:6, 46:25, 77:25 protect [2] - 33:9, 37:14 protest [1] - 97:24 protests [1] - 106:16 provide [1] - 12:6 provided [3] - 16:17, 26:17, 82:23 prudent [3] -</p>	<p>67:9, 67:12, 67:15 psychological [2] - 68:6, 71:15 Public [3] - 1:13, 110:6, 110:22 public [4] - 4:7, 11:3, 11:8, 105:9 publicly [1] - 81:20 published [1] - 91:9 pull [1] - 25:9 pulled [4] - 24:9, 34:9, 57:8, 104:22 pulling [1] - 23:3 pulse [1] - 38:8 purpose [2] - 42:7, 44:18 pursuit [2] - 29:9 push [1] - 77:2 pushed [1] - 78:24 put [33] - 5:3, 11:2, 11:7, 13:7, 17:22, 23:10, 33:8, 33:11, 39:12, 39:25, 43:7, 43:24, 50:25, 53:10, 53:11, 53:14, 53:15, 54:17, 56:9, 65:12, 87:22, 89:10, 93:18, 94:5, 95:24, 102:5, 102:14, 102:16, 102:24, 103:21, 106:8, 108:23, 108:24 Put [1] - 54:20 puts [1] - 102:15 putting [4] - 14:7, 54:20, 88:25, 93:23</p>	<p>74:1 racially [1] - 73:24 radio [20] - 4:3, 16:21, 16:23, 17:6, 52:14, 71:22, 71:24, 72:2, 72:3, 73:6, 78:6, 85:4, 88:6, 88:10, 88:21, 89:9, 90:1, 103:19, 107:20 radioed [2] - 37:16, 54:9 raffle [1] - 13:6 raised [2] - 5:6, 33:24 range [1] - 48:1 rationality [1] - 43:9 reach [13] - 31:17, 37:1, 52:17, 52:21, 53:21, 54:8, 54:11, 54:14, 54:15, 56:14, 57:3, 57:6, 57:22 reached [4] - 41:5, 53:18, 55:6, 57:7 reaches [2] - 27:16, 27:19 reaching [6] - 52:22, 53:20, 55:8, 60:12, 98:16, 104:21 read [14] - 5:2, 7:9, 15:10, 17:14, 20:21, 27:23, 49:3, 53:9, 73:5, 75:7, 75:19, 85:21, 86:1, 88:11 reading [1] - 26:15 ready [1] - 3:18 real [3] - 8:22, 31:5, 97:25 realize [3] - 78:5, 79:10, 97:1 realized [3] - 45:5, 63:17, 105:19 really [13] - 16:7, 41:15, 57:8, 57:24, 63:16, 70:9, 78:9, 80:14, 91:3, 95:3, 103:14, 103:23, 106:12 reapproach [1] - 35:17 reapproaching [1] - 45:14 rear [1] - 21:6 reason [6] - 57:17, 60:13,</p>	<p>73:21, 75:20, 76:6, 76:9 reasonable [5] - 52:9, 52:11, 54:5, 54:11, 57:1 reasonably [5] - 51:24, 52:1, 54:3, 55:9, 101:10 reasons [1] - 76:23 receive [1] - 6:25 received [11] - 5:9, 5:12, 5:16, 5:22, 6:2, 6:5, 6:11, 68:3, 68:4, 68:5, 68:6 recently [1] - 19:6 Recess [1] - 71:18 recognition [1] - 108:6 recognize [2] - 59:10, 59:12 recognizes [1] - 14:21 reconfirm [1] - 24:23 record [22] - 3:2, 3:3, 6:1, 11:3, 11:8, 15:2, 18:4, 25:21, 25:22, 26:19, 27:4, 30:23, 30:24, 34:7, 34:14, 51:9, 71:14, 77:18, 79:21, 109:7 recorded [3] - 33:17, 80:2, 110:8 recording [9] - 26:23, 27:17, 28:24, 29:6, 29:8, 30:13, 31:22, 79:25, 80:4 recordings [1] - 52:19 records [3] - 5:11, 29:20, 50:8 recounted [1] - 78:15 recreate [1] - 59:14 recruit [1] - 50:20 reduced [1] - 110:9 redundant [1] - 28:16 refer [1] - 94:21 reference [3] - 27:11, 89:8, 92:13 referencing [1] - 53:7 referred [1] - 18:23 referring [4] -</p>	<p>27:11, 31:19, 79:25, 92:25 refers [1] - 92:10 reflect [1] - 3:2 regard [1] - 106:2 regarding [5] - 24:8, 42:5, 65:5, 76:18, 96:15 regardless [1] - 28:7 Registered [2] - 1:12, 110:5 regular [1] - 59:21 regulations [1] - 4:20 re hitting [1] - 77:18 related [3] - 5:13, 12:13, 80:11 relates [2] - 52:25, 55:25 relative [2] - 110:12, 110:13 relayed [1] - 69:13 release [3] - 11:16, 89:18, 89:22 Release [1] - 88:9 released [1] - 89:17 remedial [1] - 9:9 remember [3] - 48:22, 49:18, 49:20 removal [1] - 48:13 render [5] - 33:21, 34:18, 35:24, 39:1, 39:3, 44:21 rendered [2] - 34:11, 67:7 rendering [3] - 34:3, 47:15, 67:5 repair [1] - 31:7 repeat [1] - 100:7 replace [1] - 99:14 report [12] - 10:2, 10:13, 12:21, 12:24, 23:11, 25:25, 52:4, 59:20, 68:17, 70:10, 73:3, 92:16 Reporter [2] - 1:13, 110:6 reporters [1] - 18:1 reporting [1] - 89:15 reports [4] - 9:8,</p>
--	--	--	--	--

BROWN & JONES REPORTING, INC.

414-224-9533

28:23, 35:9, 92:24 represented [1] - 82:22 reprimand [1] - 90:23 reputation [1] - 105:17 request [1] - 11:11 requested [2] - 11:9, 82:23 requests [1] - 11:4 required [3] - 29:6, 68:7, 92:21 requirement [2] - 4:25, 38:24 requires [1] - 71:14 research [3] - 20:18, 21:2, 41:25 resist [1] - 11:11 respect [1] - 30:9 respond [5] - 52:1, 55:10, 61:8, 97:14, 106:21 responded [1] - 108:8 responding [5] - 23:13, 64:5, 81:17, 81:25, 95:24 responds [1] - 35:2 response [4] - 6:20, 11:1, 24:12, 96:17 responsible [1] - 72:25 resulted [1] - 30:1 retired [3] - 3:10, 6:9, 86:12 return [5] - 64:25, 71:21, 95:11, 95:13, 101:6, 101:21 returned [4] - 83:13, 83:17, 84:14, 101:24 returning [2] - 85:4, 101:13 returns [3] - 93:13, 93:14, 106:19 review [7] - 4:23, 5:2, 11:22, 69:12, 70:10, 89:2, 89:23 reviewed [2] - 19:5, 71:25 reviewing [2] - 83:21, 100:4 rewards [1] - 12:19 Rich [2] - 2:11	3:11 rid [1] - 44:20 ride [1] - 8:2 riding [2] - 8:5, 106:20 rights [2] - 12:4, 90:10 rise [1] - 9:12 risk [8] - 25:2, 56:24, 56:25, 93:9, 93:12, 96:3, 101:15 road [6] - 33:6, 33:7, 94:6, 94:9, 106:8, 106:19 robots [1] - 98:9 Roman [2] - 26:10, 27:13 room [2] - 6:10, 9:25 roommate [1] - 108:9 rose [1] - 42:12 rotate [1] - 70:7 rotation [1] - 70:1 Roy [4] - 8:7, 48:23, 49:5, 69:4 ruin [1] - 105:17 ruined [2] - 102:3, 102:4 Rule [11] - 13:10, 14:18, 18:13, 18:21, 19:13, 72:9, 72:12, 92:9, 92:10, 92:11, 93:7 rule [9] - 12:7, 12:19, 18:12, 18:13, 24:14, 75:12, 76:9, 92:7, 100:17 Rules [5] - 10:20, 11:22, 12:12, 12:16, 74:21 rules [5] - 4:20, 72:8, 92:1, 92:14, 93:5 run [2] - 70:18, 74:20 running [4] - 26:22, 29:2, 30:8, 104:18	106:18, 107:10 Salyers [2] - 36:21, 49:23 samurai [1] - 104:3 sat [1] - 21:10 save [1] - 47:22 saw [16] - 32:16, 37:20, 39:15, 40:5, 45:3, 45:4, 46:5, 46:6, 46:8, 54:8, 60:11, 64:6, 65:23, 72:4, 77:8, 98:21 scene [16] - 28:23, 30:18, 34:9, 34:25, 35:13, 36:22, 42:7, 47:6, 57:19, 77:16, 79:14, 81:22, 82:13, 84:6, 95:24, 106:21 scope [1] - 63:23 seal [1] - 110:17 seat [1] - 52:18 second [9] - 15:6, 27:11, 43:3, 58:17, 65:22, 66:7, 66:13, 74:4, 83:20 second-guess [1] - 66:7 second-guessing [1] - 66:13 seconds [10] - 26:20, 27:5, 27:7, 30:13, 58:1, 63:4, 63:15, 66:17, 77:11, 78:19 sections [1] - 11:24 secure [2] - 44:11, 49:17 see [25] - 6:18, 15:7, 15:19, 16:7, 19:20, 20:1, 21:7, 21:25, 23:9, 24:9, 24:13, 29:20, 32:18, 36:22, 40:3, 45:3, 46:9, 49:24, 50:7, 52:21, 53:10, 53:12, 53:17, 59:3, 98:15 seeing [5] - 60:22, 71:9, 86:6, 86:9, 97:18 seem [2] - 17:17, 39:8 sees [3] - 23:4, 52:16, 82:10 segment [1] - 35:19 self [2] - 41:22, 64:19	self-defense [1] - 41:22 self-initiated [1] - 64:19 send [1] - 68:10 sense [1] - 16:10 sensitive [1] - 99:11 sentence [1] - 81:9 separate [2] - 85:19, 97:1 September [5] - 1:16, 70:3, 70:5, 110:9, 110:18 sequence [1] - 79:24 serious [2] - 83:5, 100:19 seriously [2] - 83:6, 83:7 service [1] - 6:6 session [1] - 105:9 set [5] - 94:7, 95:14, 105:16, 107:12, 110:16 sets [1] - 55:15 setting [3] - 89:4, 89:6, 89:7 seven [2] - 86:3, 86:22 several [8] - 5:22, 47:3, 59:25, 85:10, 85:14, 85:18, 86:4, 90:21 shadow [1] - 8:19 shadows [1] - 46:11 shaking [1] - 67:21 shall [5] - 35:23, 72:9, 72:11, 72:14, 93:8 shift [3] - 50:15, 84:2, 84:3 shirt [3] - 31:12, 31:14, 87:23 shoes [1] - 95:25 shoot [9] - 54:16, 54:19, 57:22, 63:9, 67:9, 71:16, 95:22, 104:5, 109:2 shooting [54] - 11:10, 16:3, 28:22, 29:3, 30:10, 30:11, 30:14, 30:16, 30:21, 31:22, 33:23, 34:19, 34:21, 35:11, 35:20, 36:8, 43:8, 43:11, 44:5, 46:9, 47:1, 51:1, 51:10,	51:15, 51:17, 53:3, 55:10, 58:2, 63:3, 63:7, 63:8, 64:8, 65:2, 68:2, 68:7, 68:15, 69:2, 69:22, 76:20, 77:16, 78:14, 79:16, 79:18, 80:19, 84:17, 86:11, 87:1, 87:8, 93:16, 94:2, 96:16, 97:8, 99:22, 100:6 shootings [16] - 62:18, 62:19, 63:22, 65:1, 70:16, 83:25, 84:9, 85:15, 86:1, 86:5, 86:14, 93:11, 93:25, 97:3, 97:7 shoots [3] - 54:4, 94:13, 98:17 short [4] - 21:11, 65:9, 100:15, 105:24 shortly [1] - 52:16 shot [16] - 34:10, 37:6, 45:22, 47:10, 47:22, 55:7, 56:18, 63:12, 63:13, 84:7, 96:21, 104:19, 104:20, 104:23, 104:24, 108:18 shots [9] - 46:6, 46:8, 63:2, 63:4, 63:15, 63:17, 63:25, 80:5, 83:10 show [8] - 34:5, 34:7, 48:20, 49:2, 52:24, 82:20, 98:8, 104:9 showed [1] - 6:1 showing [1] - 104:12 shows [1] - 22:8 shut [1] - 16:10 side [16] - 18:17, 18:18, 18:25, 19:1, 19:8, 19:10, 19:22, 19:24, 19:25, 20:17, 20:23, 21:16, 21:24, 57:3, 57:4, 98:12 sideview [1] - 21:7 similar [4] - 6:5, 11:25, 56:13, 63:20 single [7] - 37:23, 80:23, 81:1, 81:4, 88:12, 88:15, 92:7 sirens [1] - 43:25 situation [25] - 21:22, 35:22, 37:11, 38:13, 42:6,
---	--	--	--	--

BROWN & JONES REPORTING, INC.

414-224-9533

48:10, 48:24, 49:18, 54:16, 54:24, 60:16, 64:2, 65:13, 80:21, 92:18, 93:9, 93:15, 96:20, 97:6, 97:12, 98:3, 100:1, 102:16, 103:22, 105:22 situations [4] - 10:9, 32:25, 47:3, 98:18 six [6] - 4:8, 62:17, 63:12, 63:15, 63:17 size [1] - 97:2 skip [1] - 104:7 slander [2] - 14:6, 15:18 slightly [2] - 58:19, 100:2 slow [2] - 29:9, 66:15 slow-speed [1] - 29:9 smell [1] - 61:25 smoked [2] - 59:22, 59:23 Social [2] - 14:1, 14:13 social [2] - 14:14, 16:14 Solicitation [1] - 13:11 soliciting [1] - 13:12 someone [2] - 22:1, 71:4 sometimes [6] - 13:1, 13:2, 48:17, 59:5, 94:20, 98:7 somewhat [1] - 20:9 somewhere [1] - 103:16 sooner [3] - 40:12, 40:23, 40:25 sorry [2] - 68:11, 69:3 sort [2] - 44:14, 106:12 sound [3] - 64:14, 85:20, 108:12 sounds [2] - 45:22, 107:7 sources [1] - 52:15 Southwest [1] - 4:6 speaking [4] - 48:21, 48:22, 80:18, 90:18	special [1] - 6:20 specific [4] - 5:22, 7:12, 56:12, 69:14 specifically [3] - 5:21, 50:8, 80:19 spectrum [1] - 42:14 speculate [1] - 23:8 speculating [1] - 45:10 speed [4] - 27:16, 27:19, 27:25, 29:9 spends [1] - 25:24 split [1] - 82:17 spotlight [1] - 33:11 squad [13] - 18:21, 22:20, 22:25, 26:7, 26:12, 27:16, 27:19, 31:3, 35:16, 44:14, 76:17, 76:19, 78:17 Squad [2] - 34:15, 34:16 squad's [1] - 27:15 square [1] - 80:13 SRT [2] - 6:19, 6:21 sS [1] - 110:1 stabilized [2] - 35:22, 48:10 stabilizing [1] - 37:10 stable [1] - 38:13 stage [1] - 53:5 staged [1] - 37:21 stages [2] - 8:7, 8:8 staging [1] - 38:14 stand [2] - 65:22, 70:23 standard [1] - 101:9 Standards [1] - 5:20 standards [3] - 10:3, 51:20, 99:16 standing [1] - 44:14 standpoint [4] - 41:3, 57:2, 67:2, 96:25 stands [1] - 69:21 Starbucks [1] - 12:22 start [11] - 3:18, 4:25, 8:10, 8:13,	27:14, 35:19, 51:19, 54:1, 58:2, 72:6, 99:13 started [9] - 3:23, 4:2, 31:22, 47:11, 47:15, 50:16, 53:14, 98:20, 106:16 starting [1] - 16:24 starts [5] - 34:4, 34:8, 54:19, 54:22, 88:12 state [6] - 19:20, 25:22, 38:24, 39:5, 51:21, 77:21 STATE [1] - 110:1 State [3] - 1:13, 110:7, 110:22 statement [13] - 14:7, 15:7, 15:17, 22:14, 30:18, 53:10, 68:24, 76:18, 81:16, 81:23, 86:1, 90:3, 108:17 statements [7] - 51:16, 52:13, 71:23, 74:10, 76:16, 78:1, 89:25 states [9] - 14:14, 27:13, 55:20, 72:9, 72:10, 72:13, 80:20, 85:7, 88:16 stating [3] - 42:21, 79:17, 81:25 station [1] - 78:7 statistically [1] - 97:4 Statute [1] - 38:23 statute [2] - 39:2, 39:5 stay [1] - 88:6 stayed [2] - 4:5, 4:9 staying [2] - 16:12, 19:9 stellar [1] - 64:15 step [6] - 8:10, 8:22, 43:13, 43:15, 43:23, 54:10 steps [1] - 8:10 Steve [4] - 21:12, 41:12, 49:3, 101:20 Steven [1] - 3:6 STEVEN [1] - 2:2 still [9] - 8:24, 11:14, 36:25, 38:6, 40:22, 58:9, 91:25, 102:20, 102:21	stolen [3] - 82:16, 89:20, 104:13 stop [13] - 29:7, 31:24, 31:25, 32:3, 32:13, 32:14, 39:10, 51:5, 52:22, 52:23, 63:8, 63:9, 97:22 stopped [3] - 47:20, 63:11, 64:7 stopping [4] - 32:16, 32:17, 97:21, 97:22 stops [10] - 10:10, 19:20, 27:1, 27:21, 27:25, 28:3, 28:7, 28:12, 28:14, 70:18 straight [1] - 20:8 street [3] - 92:22, 93:19, 93:24 streets [1] - 101:13 strictly [1] - 41:3 striking [2] - 83:12, 84:15 strongly [1] - 96:13 struck [2] - 22:1, 56:2 stuff [1] - 48:20 sub [2] - 35:23, 88:9 subject [3] - 37:16, 39:14, 88:13 subjective [2] - 52:6, 96:15 submitted [1] - 16:19 subsequent [1] - 51:25 substance [3] - 15:6, 18:10, 71:25 substantial [1] - 56:24 sucking [1] - 39:11 sudden [2] - 53:17, 74:16 suggest [2] - 27:23, 28:5 suggesting [1] - 81:19 Suite [3] - 1:15, 2:3, 2:6 summarize [1] - 5:14 summarizing [1] - 51:20 summary [2] - 3:22, 82:22 summertime [1] -	23:5 super [1] - 99:10 superior [2] - 30:17, 72:21 superiors [1] - 73:2 supervisor [7] - 72:12, 72:14, 75:3, 75:10, 75:12, 96:2 supervisory [1] - 68:23 supplied [2] - 5:11, 6:3 supply [1] - 87:11 support [2] - 77:8, 96:12 suppose [1] - 28:20 supposed [5] - 28:13, 47:21, 49:1, 61:6, 75:8 survived [1] - 84:7 suspect [16] - 34:22, 35:22, 36:12, 37:4, 45:16, 53:20, 54:13, 57:14, 73:13, 80:24, 83:10, 83:17, 84:7, 84:15 suspect's [2] - 56:15, 57:20 suspects [2] - 71:4, 83:13 suspend [2] - 72:17, 74:2 suspended [7] - 73:12, 73:21, 73:22, 75:20, 75:22, 76:5, 76:10 suspending [1] - 76:7 suspension [11] - 73:23, 89:10, 89:11, 90:5, 91:2, 91:5, 91:18, 91:23, 91:25, 102:17, 102:25 SWAT [1] - 6:21 swinging [1] - 104:3 sword [3] - 61:1, 61:6, 104:3 sympathies [1] - 108:21 system [1] - 27:13
				T
				take-down [4] - 18:23, 20:22, 20:24, 21:8 take-downs [1] -

BROWN & JONES REPORTING, INC.

414-224-9533

<p>25:3 talks [3] - 48:9, 71:1, 93:8 taught [3] - 21:18, 47:25, 63:9 teach [1] - 20:11 teaching [1] - 49:10 team [5] - 6:19, 6:20, 20:15, 69:18, 69:20 Teams [1] - 69:21 technique [1] - 25:1 techniques [1] - 10:11 ten [2] - 86:10, 100:9 terminated [1] - 30:6 termination [1] - 9:5 terms [4] - 17:21, 58:21, 71:3, 74:2 testify [2] - 92:24, 93:2 THE [53] - 1:4, 3:19, 7:5, 7:24, 8:9, 9:3, 9:6, 9:15, 9:21, 21:1, 21:20, 22:4, 25:4, 25:19, 26:1, 33:1, 33:3, 33:7, 33:16, 44:8, 44:22, 45:9, 45:19, 46:3, 49:9, 50:3, 50:9, 50:22, 57:18, 61:24, 65:14, 66:9, 66:12, 67:14, 70:14, 70:21, 71:6, 71:8, 80:3, 88:2, 91:6, 91:12, 91:20, 91:24, 102:1, 106:5, 106:9, 106:15, 106:23, 107:6, 107:21, 108:1, 108:4 thinking [5] - 43:5, 43:9, 45:1, 46:10, 67:22 thinks [1] - 98:17 third [2] - 49:24, 53:16 thoughts [1] - 43:6 threat [12] - 47:20, 51:24, 52:2, 54:6, 54:12, 54:18, 59:10, 59:12, 63:10, 63:11, 63:18, 64:7 threatened [4] - 57:16, 61:1, 82:15, 104:17</p>	<p>threatening [2] - 82:13, 108:9 threats [1] - 95:15 three [28] - 3:10, 6:4, 6:9, 8:4, 35:14, 36:1, 36:19, 37:7, 37:8, 37:21, 47:9, 48:23, 49:21, 51:23, 62:18, 63:25, 64:2, 65:1, 82:18, 93:11, 93:24, 97:3, 97:9, 100:7, 100:23, 105:5, 106:3, 106:5 three-minute [1] - 36:19 throw [1] - 73:8 ticket [1] - 98:10 tickets [1] - 100:14 timely [1] - 46:25 tire [1] - 33:5 today [5] - 3:8, 3:13, 4:23, 5:8, 7:7 together [7] - 9:24, 9:25, 34:17, 37:21, 47:10, 106:20, 106:21 tonight [2] - 94:13, 94:14 took [4] - 41:5, 41:12, 43:12, 108:11 top [1] - 19:19 topic [1] - 47:17 total [5] - 5:24, 62:20, 63:2, 63:25, 97:6 totality [5] - 40:7, 65:1, 92:5, 93:3, 100:12 totally [2] - 9:10, 46:14 totals [1] - 5:17 touch [2] - 41:23, 98:9 tough [1] - 105:25 towards [3] - 35:16, 53:3, 53:21 traffic [15] - 10:10, 19:20, 27:21, 27:24, 28:2, 28:7, 28:12, 28:14, 29:7, 31:24, 31:25, 32:3, 32:13, 32:14, 70:18 tragedy [1] - 108:19 trailing [1] - 49:25 trained [2] - 57:23, 109:3 trainer [1] - 50:15</p>	<p>Training [1] - 5:20 training [50] - 5:9, 5:13, 5:17, 5:18, 5:22, 5:24, 6:2, 6:6, 6:12, 6:13, 6:15, 6:17, 6:18, 6:22, 6:25, 7:3, 7:9, 7:16, 7:22, 7:25, 8:16, 8:20, 9:9, 9:22, 10:6, 21:14, 25:21, 25:22, 25:23, 37:25, 39:6, 39:18, 46:21, 47:16, 47:24, 48:2, 50:6, 50:8, 50:10, 50:12, 50:13, 50:20, 56:21, 57:13, 64:5, 64:16, 65:7, 66:3, 68:6, 68:8 TRANSCRIPT [1] - 3:1 transcript [1] - 72:4 transition [3] - 9:20, 47:21, 51:11 transitioned [1] - 47:4 tried [16] - 30:19, 30:22, 30:23, 31:25, 59:14, 77:17, 77:18, 77:24, 78:2, 78:21, 78:24, 79:2, 79:18, 79:19, 79:20, 80:16 trigger [1] - 104:22 triple [1] - 99:19 tripled [1] - 97:10 troopers [1] - 19:21 trouble [4] - 10:13, 79:7, 94:22, 97:17 troubles [2] - 29:1, 81:24 true [4] - 76:2, 76:5, 107:16, 107:25 truly [1] - 23:17 trust [1] - 18:1 truth [1] - 30:4 try [7] - 11:11, 66:25, 80:13, 80:14, 80:15, 94:7, 107:11 trying [15] - 31:15, 31:17, 40:15, 40:20, 43:6, 44:14, 46:11, 47:22, 66:19,</p>	<p>79:12, 80:12, 82:14, 84:11, 85:11, 108:9 turn [25] - 20:7, 26:10, 28:14, 30:25, 34:2, 43:8, 51:5, 65:17, 76:25, 77:3, 77:19, 77:23, 77:24, 78:2, 78:3, 78:8, 78:10, 78:24, 79:2, 79:3, 79:12, 79:15, 79:18, 79:22, 80:4 turned [16] - 28:24, 29:16, 29:17, 29:21, 30:5, 76:24, 76:25, 77:4, 77:9, 77:22, 78:5, 78:8, 78:23, 79:4 turning [3] - 18:22, 23:3, 76:21 turns [1] - 103:3 TV [1] - 105:14 twice [1] - 15:13 Two [1] - 84:14 two [23] - 4:9, 6:10, 40:2, 49:1, 49:19, 52:5, 53:13, 58:1, 61:4, 63:4, 63:15, 63:21, 66:17, 67:13, 83:15, 83:19, 84:6, 84:8, 86:16, 86:19, 86:21, 99:25, 100:7 type [4] - 5:18, 9:8, 12:16, 104:10</p>	<p>66:6 unfortunate [2] - 105:23, 109:4 unfortunately [3] - 69:16, 70:7, 97:18 uniform [3] - 8:21, 30:12, 31:11 union [2] - 12:5, 90:20 union's [1] - 103:6 unit [1] - 30:12 unload [1] - 64:3 unnecessary [2] - 93:9, 101:15 unobserved [1] - 20:24 unsafe [1] - 9:10 unsatisfactory [2] - 9:4, 9:7 unsuccessful [1] - 80:11 unsure [1] - 10:8 up [52] - 9:22, 14:9, 15:14, 19:21, 19:24, 25:14, 25:21, 30:5, 30:14, 34:9, 36:17, 37:20, 37:25, 38:9, 39:16, 40:3, 43:13, 43:15, 43:24, 48:21, 49:2, 52:21, 53:12, 53:15, 54:10, 54:17, 54:21, 56:7, 56:9, 57:8, 62:9, 64:21, 65:11, 65:20, 65:23, 66:3, 66:17, 68:1, 68:15, 70:4, 77:14, 94:7, 95:7, 95:14, 99:18, 101:19, 103:16, 104:2, 107:12 uses [2] - 56:23, 100:18 usual [1] - 39:18 utilize [3] - 17:18, 70:11, 102:21 utilized [3] - 10:24, 12:17, 69:15</p>
U				
<p>U.S [1] - 100:3 ultimate [1] - 96:2 ultimately [4] - 29:24, 37:6, 54:4, 79:3 unaware [1] - 36:23 unclear [1] - 7:21 under [30] - 4:16, 18:21, 26:10, 27:13, 29:4, 34:18, 35:23, 36:5, 38:24, 40:8, 40:13, 40:24, 42:17, 51:22, 53:7, 54:5, 55:3, 58:20, 60:10, 60:20, 61:10, 62:13, 89:2, 89:9, 89:11, 91:3, 92:8, 101:14, 106:13, 110:10 undermined [1] - 93:2 unfair [1] - 58:22 unfolded [1] -</p>				
V				
<p>valor [1] - 108:7 various [1] - 28:4 vehicle [22] - 18:17, 18:22, 18:25, 19:7, 20:11, 22:13, 22:18, 22:25, 23:7, 25:2, 25:5, 26:5, 32:11, 35:16, 35:17, 36:3, 36:25, 41:6, 45:14,</p>				

BROWN & JONES REPORTING, INC.

414-224-9533

52:16, 52:18, 53:6 vehicle's [1] - 27:18 vehicles [2] - 21:24, 23:19 verbal [3] - 54:25, 55:16, 55:18 version [3] - 51:3, 52:23, 55:15 versus [3] - 23:6, 24:1, 24:17 vest [1] - 87:23 Vetter [2] - 69:3 vibrates [1] - 87:21 vibration [1] - 87:24 video [32] - 26:7, 31:3, 31:20, 34:7, 34:12, 34:15, 34:25, 35:5, 35:8, 36:21, 36:23, 37:21, 40:5, 41:16, 42:20, 50:25, 51:6, 51:7, 52:13, 53:5, 53:9, 55:4, 55:17, 56:1, 56:2, 60:5, 61:13, 76:17, 76:19, 78:19, 80:12 videos [3] - 34:6, 51:10, 66:14 videotape [1] - 22:17 view [8] - 19:12, 21:6, 37:4, 40:9, 54:7, 91:4, 95:10, 96:13 violate [5] - 19:13, 90:5, 91:4, 91:19, 91:21 violated [7] - 13:25, 14:4, 16:19, 18:16, 18:20, 76:21, 91:7 violation [13] - 16:6, 16:9, 19:3, 20:10, 23:20, 24:8, 32:7, 42:13, 51:13, 76:23, 82:9, 89:4, 91:15 volatile [1] - 106:12	67:14 walk [2] - 19:21, 44:13 walked [3] - 19:7, 37:22, 37:25 walking [1] - 65:20 walks [1] - 44:16 wandering [2] - 37:2, 49:25 want-to-be [1] - 104:10 wants [4] - 12:23, 19:15, 46:18, 103:21 warning [2] - 55:19, 55:20 watch [1] - 66:14 watched [3] - 52:24, 53:9, 61:13 watching [3] - 34:14, 55:4, 60:5 Waukesha [1] - 69:25 WAUWATOSA [1] - 1:4 Wauwatosa [26] - 3:5, 3:14, 3:24, 4:12, 4:17, 5:1, 11:1, 11:18, 11:23, 12:8, 13:17, 22:20, 23:22, 34:24, 43:15, 69:24, 75:15, 93:22, 94:14, 94:17, 96:21, 97:2, 97:21, 103:20, 107:13, 107:15 Wauwatosa's [1] - 15:1 wealthy [1] - 103:4 weapon [27] - 31:16, 41:11, 52:22, 53:18, 53:21, 55:6, 55:8, 57:7, 57:15, 57:22, 78:17, 80:25, 81:1, 84:25, 87:4, 88:14, 88:15, 88:20, 89:19, 89:20, 104:4, 104:5, 104:13, 104:16, 104:21 weapons [8] - 40:1, 70:20, 85:18, 85:19, 86:16, 86:20, 86:21, 86:24 wear [3] - 31:10, 31:11, 87:22 Weber [3] - 2:7, 3:14, 83:21	WEBER [2] - 1:11, 110:8 weeks [1] - 8:3 weird [1] - 73:9 West [4] - 1:14, 2:3, 69:24, 70:4 wheel [1] - 65:12 whereby [1] - 70:19 whereof [1] - 110:16 wherewithal [2] - 39:23, 43:7 whichever [1] - 19:15 whiskey [1] - 59:18 white [1] - 18:23 whole [3] - 13:4, 48:7, 80:20 wide [1] - 69:18 win [1] - 102:16 window [1] - 59:3 Wisconsin [11] - 1:14, 1:15, 2:4, 2:7, 5:19, 38:23, 92:18, 93:1, 110:7, 110:18, 110:22 WISCONSIN [1] - 110:1 wisest [1] - 16:8 wish [6] - 16:3, 40:12, 40:23, 41:12, 42:22, 103:23 WISN [2] - 16:21, 17:6 witness [1] - 110:16 WITNESS [52] - 3:19, 7:5, 7:24, 8:9, 9:3, 9:6, 9:15, 9:21, 21:1, 21:20, 22:4, 25:4, 25:19, 26:1, 33:1, 33:3, 33:7, 33:16, 44:8, 44:22, 45:9, 45:19, 46:3, 49:9, 50:3, 50:9, 50:22, 57:18, 61:24, 65:14, 66:9, 66:12, 67:14, 70:14, 70:21, 71:6, 71:8, 80:3, 88:2, 91:6, 91:12, 91:20, 91:24, 102:1, 106:5, 106:9, 106:15, 106:23, 107:6, 107:21, 108:1, 108:4 wondering [2] - 48:18, 50:2 Wood [2] - 4:3, 4:5	word [3] - 14:10, 56:23, 58:25 words [1] - 104:6 works [2] - 7:23, 103:15 worn [2] - 26:13, 88:3 worth [2] - 33:16, 59:18 wound [3] - 30:5, 39:11, 39:12 wounds [4] - 39:8, 39:15, 45:3, 45:4 writing [4] - 5:4, 10:13, 72:15, 110:9 written [5] - 48:17, 48:18, 48:19, 49:12, 102:12
Y			
Y'all [2] - 14:8, 15:11 year [6] - 7:25, 8:25, 50:18, 84:24, 108:5 years [13] - 4:3, 4:10, 4:12, 31:1, 50:10, 85:14, 85:17, 85:24, 86:4, 86:13, 90:21, 93:11, 104:9 yourself [3] - 33:9, 72:22, 95:24 Yup [1] - 37:24 yup [1] - 43:19			
Z			
zone [1] - 29:23			

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October 2, 2020

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Attorney Steven M. Biskupic
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Mequon, WI 53092

Re: Interview of Chief Barry Weber

Dear Mr. Biskupic:

As we discussed, I write to clarify and provide context to a couple of points in your interview of Chief Weber.

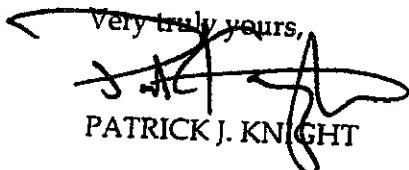
Toward the end of the interview at page 101, you asked if returning Officer Mensah "would create an unnecessary risk for the department". Chief Weber responded that he would not dispute that statement. In the lengthy discussion leading up to that question Chief Weber acknowledged that the return of Officer Mensah to active street duty carried some risk, primarily risk to officer Mensah's safety given past events and the ongoing threats to him. In not disputing your statement Chief Weber did not mean to suggest that Officer Mensah's conduct in the performance of his duties created any unnecessary risk. Chief Weber also wishes to point out that he is not the person to determine when a risk is unnecessary. If the Fire and Police Commission returns Office Mensah to active duty, it is Chief Weber's responsibility to take steps to minimize that risk for all members of the police department and the community. It is the Fire and Police Commission's role to determine if such a risk is "unnecessary".

Additionally, you and Chief Weber discussed Officer Mensah's radio interview with the question being whether doing that interview was a basis for discipline. Chief Weber believes that under the "just cause" standards of Section 6213 of the Statutes, Officer Mensah would not have known that his comments could have violated any rules.

Thank you for the opportunity for the Chief to provide these clarifications.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


PATRICK J. KNIGHT

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